

UNITED STATES DISTRICT COURT  
U.S. DISTRICT COURT  
District of Utah

UNITED STATES OF AMERICA v. Kevin James Garner  
Judgment in a Criminal Case  
(For Revocation of Probation or Supervised Release)

2011 NOV 16 P 4:10  
DISTRICT OF UTAH  
BY: *[Signature]*  
DEPUTY CLERK Case No. DUTX1:09-CR-00094-001 DAK  
USM No. 16691-081  
Viviana Ramirez  
Defendant's Attorney

**THE DEFENDANT:**

- ☒ admitted guilty to violation of condition(s) 1 and 2 of the term of supervision.  
☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1	Dft tested positive for opiates	09/06/2011
2	Dft absconded from his public law placement at the Geo Care Residential Reentry Center	09/09/2011

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 2012

Defendant's Year of Birth: 1958

City and State of Defendant's Residence:  
Salt Lake City, Utah

11/16/2011

Date of Imposition of Judgment

*[Signature]*

Signature of Judge

Dale A. Kimball

U.S. District Judge

Name and Title of Judge

11/16/2011

Date

DEFENDANT: Kevin James Garner  
CASE NUMBER: DUTX1:09-CR-00094-001 DAK

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

6 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kevin James Garner

CASE NUMBER: DUTX1:09-CR-00094-001 DAK

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
12 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Kevin James Garner

CASE NUMBER: DUTX1:09-CR-00094-001 DAK

**SPECIAL CONDITIONS OF SUPERVISION**

1. All previously imposed special conditions are reimposed.
2. The defendant shall reside in a residential reentry center under a Public Law placement for a period of up to 150 days, with release for work, education, medical, religious services, treatment, or other approved release as deemed appropriate by the probation office or residential reentry center.
3. The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.

DEFENDANT: Kevin James Garner  
CASE NUMBER: DUTX1:09-CR-00094-001 DAK

**ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES**

1. The outstanding balance of \$93 for the urinalysis fee ordered on June 23, 2010, for the original offense is reinstated.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

JL BARRETT CORPORATION d/b/a ACCUCOLOR DIGITAL PRINT,  Plaintiff/Counterclaim Defendant,  vs.  CANON BUSINESS SOLUTIONS, INC.,  Defendant/Counterclaimant.	ORDER TO SHOW CAUSE       Case No. 1:10-CV-87 TS
---	---

On July 21, 2011, the Court granted counsel of Plaintiff's Motion or Withdrawal of Counsel. As part of that Order, the Court stated:

A Notice of Substitution of Counsel shall be filed on behalf of Accucolor, which is an artificial entity, and a Notice of Substitution of Counsel or Notice of Appearance shall be filed on behalf of or by Louis Barrett within twenty-one (21) days after entry of this order. Pursuant to DUCivR 83-1.3, no corporation, association, partnership, limited liability company, or other artificial entity may appear pro se and such party must be represented by an attorney who is admitted to practice in this court.<sup>1</sup>

---

<sup>1</sup>Docket No. 44.

The Court further stated:

A party who fails to file such a Notice of Substitution of Counsel as set forth above may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including without limitation dismissal or default judgment.<sup>2</sup>

To date, counsel has not filed a Notice of Appearance for JL Barret Corporation d/b/a Accucolor Digital Print or Mr. Barrett and Mr. Barrett has not filed a notice of appearance on his behalf.

Plaintiff is, therefore, directed to show cause why this matter should not be dismissed for failure to prosecute and failure to comply with this Court's Order Granting Withdrawal of Counsel. Plaintiff shall respond to this Order within fourteen (14) days. Failure to do so may result in the dismissal of Plaintiff's claims.

SO ORDERED.

DATED November 17, 2011.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

---

<sup>2</sup>*Id.*

# United States District Court

## CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA  
V.

### ORDER SETTING CONDITIONS OF RELEASE

JASON SARAYUTH

Case Number: 1:11-CR-123 CW

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall next appear at (if blank, to be notified)

\_\_\_\_\_  
PLACE

\_\_\_\_\_  
on

\_\_\_\_\_  
DATE AND TIME

### Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

\_\_\_\_\_  
dollars (\$ )

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.



### Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ( ) (6) The defendant is placed in the custody of:  
(Name of person or organization)  
(Address)  
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_  
Custodian or Proxy

- (✓)(7) The defendant shall:
- (✓)(a) maintain or actively seek verifiable employment.
  - ( ) (b) maintain or commence an educational program.
  - (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:  
maintain residence with parents at the address reported to PTS. No change without prior permission of PTS.
  - (✓)(d) avoid all contact with persons, who are considered co-defendants, victims or potential witnesses.
  - (✓)(e) report on a regular basis to the supervising officer as directed.
  - (✓)(f) comply with the following curfew: 10:00 p.m. to 6:00 a.m.
  - (✓)(g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
  - ( ) (h) refrain from excessive use of alcohol.
  - (✓)(i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
  - ( ) (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
  - ( ) (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
  - ( ) (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
  - ( ) (m) execute a bail bond with solvent sureties in the amount of \$
  - ( ) (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
  - ( ) (o) surrender any passport to
  - (✓)(p) obtain no new passport.
  - (✓)(q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
  - ( ) (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
  - (✓)(s) submit to an electronic location monitoring program as directed by the supervising officer. Defendant responsible for all costs associated with the monitoring fees.
  - (✓)(t) no travel outside the State of Utah without prior permission of PTS.

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

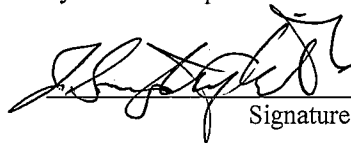
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.



Signature of Defendant

Address

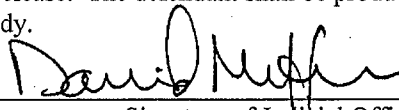
City and State

Telephone

**Directions to the United States Marshal**

- (☒) The defendant is ORDERED released after processing.
- ( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: November 17, 2011



Signature of Judicial Officer

Chief Magistrate Judge David Nuffer

Name and Title of Judicial Officer

---

**IN THE UNITED STATES DISTRICT COURT**  
**CENTRAL DIVISION, DISTRICT OF UTAH**

---

<b>AMBER DOWDY, individually and as personal representative of the Estate of Steven Dowdy, deceased, and MARK THOMLINSON AND TERESA THOMLINSON, the natural parents of Darien Thomlinson, on behalf of themselves and the other heirs of DARIAN THOMLINSON, deceased,</b>	: : : : :	<b>Civil No. 1:11-cv-45</b>  <b>ORDER &amp; RULING</b>  <b>DISTRICT COURT JUDGE DALE A. KIMBALL</b>  <b>MAGISTRATE JUDGE BROOKE C. WELLS</b>
<b>Plaintiffs,</b>		
<b>vs.</b>		
<b>THE COLEMAN COMPANY, INC.,</b>		
<b>Defendants.</b>		

---

Currently before this court is Amber Dowdy, Mark Thomlinson and Teresa Thomlinson's<sup>1</sup> ("plaintiffs") "Motion To Overrule Defendant's Objections To Discovery."<sup>2</sup> Plaintiffs' motion stems from defendant, The Coleman Company's, July 27, 2011, response to interrogatories and request for documents wherein defendant objects to the

---

<sup>1</sup>Plaintiffs are the personal representatives of the estates of Steven Dowdy and Darian Thomlinson.

<sup>2</sup>Document Number 30.

production of certain documents and information.<sup>3</sup>

## **BACKGROUND**

This case revolves around the deaths of two individuals, Steven Dowdy and Darian Thomlinson. In June 2009, Dowdy then age 28, and Thomlinson, then age 10, were camping with friends and family in Cache County, Utah. In their tent, Dowdy and Thomlinson used a propane radiant heater and a propane lantern that was designed, manufactured and sold by defendant The Coleman Company, Inc. In the morning, Dowdy and Thomlinson were found dead in their tent.

Plaintiffs allege that the heater and/or lantern produced deadly amounts of carbon monoxide causing the deaths of Dowdy and Thomlinson. Further, plaintiffs contend that at the time the heater was designed, manufactured and sold Coleman was aware that its products produced dangerous amounts of carbon monoxide and that campers using the heaters and lanterns within enclosed areas were dying.

Plaintiffs also allege that defendant has been fully apprized by the Federal Consumer Product Safety Commission ("CPSC") of the deficiencies in the warnings and instructions accompanying its propane radiant heaters. Plaintiffs contend that defendant knew its competitors had installed a built-in safety shut-off device on heaters in order to extinguish them before the emission of deadly levels of carbon monoxide. Despite this knowledge, plaintiffs assert that defendant failed to take steps to correct its own design, warn of the hazards, or conduct a product recall.

---

<sup>3</sup>Document Number 32-2. Defendant objects to requests 8, 9, 10, 11, 15, 16, 18, 21, 22 and 26.

## PENDING MOTION

Currently before the Court is plaintiff's "Motion To Overrule Defendant's Objections To Discovery."<sup>4</sup> A common theme of defendant's objections is its claim that because in this case plaintiffs specifically allege that the Coleman Powermate Model 5017 propane heater was defective, discovery related to *all* Coleman propane radiant heaters, is unreasonable and outside the scope of Federal Rule of Civil Procedure 26(b).<sup>5</sup>

Plaintiffs challenge Coleman's objections as identical to those raised by the defendant in other jurisdictions addressing same this type of litigation.<sup>6</sup> In support, plaintiffs supply the Affidavit of attorney Mark N. Stageberg. Mr. Stageberg indicates that he has served as counsel in numerous other carbon monoxide product liability lawsuits involving The Coleman Company, and that in every prior lawsuit the judge has ordered production of the discovery now requested.<sup>7</sup> Plaintiffs also supply the affidavit of engineering expert Robert Engberg who attests to the similarities between the various Coleman heaters.<sup>8</sup>

---

<sup>4</sup>Document Number 30.

<sup>5</sup>Document Number 37.

<sup>6</sup>Document Number 31.

<sup>7</sup>Document Number 32 at ¶ 1 and ¶ 4.

<sup>8</sup>Document Number 33. At ¶ 9 Engberg states, "[i]n all crucial aspects the operation and design of the Powermates is identical to the operation and design of the Focus bulk mount heaters. Every Powermate and Focus model produces deadly amounts of CO with no safety shut down devise to avoid deaths to heater use." Obtaining all background material on all Focus and Powermate heaters is critical for the foundation for my opinions in this and other cases."

## DISCUSSION

“[T]he scope of discovery under the federal rules is broad and . . . ‘discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues.’”<sup>9</sup> Federal Rule of Civil Procedure 26(b)(1) permits parties to “obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of relevant evidence.”<sup>10</sup> Although “[r]elevant information need not be admissible at the trial, “ the discovery request must “appear[ ] reasonably calculated to lead to the discovery of relevant evidence.”<sup>11</sup>

After review of the scope of Rule 26, along with the court’s rulings in other jurisdictions involving substantially similar issues, this Court recognizes the value and relevancy, for discovery purposes, of any experience and knowledge that may be gained from information related to the PowerMate 5017 propane heater as well as other Coleman propane heaters. Accordingly, as to each objection the Court finds as follows.

### **Interrogatories 8, 9, 10, 11**

In general, plaintiffs’ interrogatories 8, 9, 10, and 11 seek information related to testing, research, analysis, or studies performed by defendant, or by another company or contractor on its behalf, on the PowerMate 5017 propane radiant heaters, as well as

---

<sup>9</sup>Gomez v. Martin Marietta Corp., 50 F.3d 1511, 1520 (10<sup>th</sup> Cir. 1995)(quoting, Oppenheimer Fund, Inc. V. Sanders, 437 U.S. 340, 351 (1978)).

<sup>10</sup>Fed. R. Civ. P. 26(b)(1).

<sup>11</sup>Id.

on other similar Coleman heaters. Plaintiffs also seek testing information obtained relevant to carbon monoxide production, carbon dioxide production, and the Oxygen Depletion Sensor.<sup>12</sup>

In addition to the general objections that the requests are overly broad and unduly burdensome, Coleman specifically objects to plaintiffs' request for information regarding "all similar Coleman heaters." Coleman maintains that the Model 5017 heater at issue in this case is "unique" in that it is certified to a different standard and operates at a different Btu (British Thermal Units) output than other Coleman heaters.<sup>13</sup> Coleman argues that because the Model 5017 heater is not "substantially similar" to any other Coleman heater, information related to other Coleman heaters is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

The information sought by plaintiffs is relevant to the case. At this stage of the litigation, it is appropriate for plaintiff to seek discovery related to any scientific research or testing conducted in order to understand the dangers of carbon monoxide poisoning that may attend to the use of defendant's heaters. Because knowledge may be gained from testing related to other models, for purposes of discovery, it is relevant or reasonably calculated to lead to the discovery of admissible evidence.

### **Interrogatory 15**

Interrogatory 15 asks for information related to surveys or studies conducted on the consumer use of the PowerMate 5017 propane radiant heater "or any other similar

---

<sup>12</sup>Document 32-1.

<sup>13</sup>Document Number 32-2, pgs. 7-12.

Coleman heater.”<sup>14</sup> Defendant’s general objections include claims of over-breadth, undue burden and relevancy. Specific objections include the claim that information related to other heaters is irrelevant because the Model 5017 heater is unique and not substantially similar to other Coleman manufactured heaters.<sup>15</sup>

To the extent that Coleman has or is aware of any information responsive to these interrogatories,<sup>16</sup> for purposes of discovery, the court finds it to be relevant. Experience or knowledge gained from surveys or studies conducted on the Model 5017 heater or other Coleman heaters is reasonably calculated to lead to the discovery of admissible evidence.

### **Interrogatory 16**

Interrogatory 16 seeks communications between defendant and the Consumer Product Safety Commission (“CPSC”) regarding the PowerMate 5017 “or any similar Coleman heater”.<sup>17</sup> Coleman generally objects on the grounds that the request is overly broad, unduly burdensome and seeks irrelevant information. Coleman’s specific objections pertain to the scope of the interrogatory because it requests all communications with the CPSC regardless of whether the communication is relevant to the present case, and it seeks information regarding communications pertaining to “any

---

<sup>14</sup>Document 32-1, pg. 4.

<sup>15</sup>Document 32-2, pg. 14-15.

<sup>16</sup>In its response to plaintiffs’ interrogatory 15, defendant states that it is “unaware of any survey, study, research or similar investigation into the consumer use of the Powermate 5017 propane radiant heater or any other Powermate model radiant heater.” Document 32-2, pg. 15.

<sup>17</sup>Document Number 32-1, pg. 5.



other similar Coleman heater”.<sup>18</sup>

In its response, defendant indicates that without waiving the objections stated, it “will produce responsive documents relating to the Powermate model 5017 and other Powermate model propane radiant heaters.”<sup>19</sup> As to the remainder of the request, communications between the defendant and CPSC regarding other Coleman heaters regarding issues relevant to this or related litigation is, at this juncture, relevant or is reasonably calculate to lead to the discovery of admissible evidence.

### **Interrogatory 18**

Interrogatory 18 seeks information Coleman has received “by way of claim, lawsuit, or other notice of injuries or deaths occurring from the use of the PowerMate 5017 heaters, or similar Coleman heaters.”<sup>20</sup> Coleman objects asserting overbreadth, undue burden and relevance.<sup>21</sup> Additionally, Coleman objects to the extent that the interrogatory seeks information regarding claims and lawsuits pertaining to Coleman heaters other than the Powermate 5017.<sup>22</sup>

Without waiving its objections, Coleman indicates it will produce responsive documents relating to the Powermate 5017 and other Powermate propane radiant heater models.<sup>23</sup> To the extent that plaintiffs perceive Coleman’s answer as non-

---

<sup>18</sup>Document Number 32-2, pg. 15.

<sup>19</sup>Document Number 32-2, pg. 15.

<sup>20</sup>Document Number 32-1, pg. 5.

<sup>21</sup>Document Number 32-2, pg. 17.

<sup>22</sup>Id.

<sup>23</sup>Id. at pg. 18.

responsive, while such information may not be admissible at trial, for purposes of discovery, the court finds such information to be relevant or reasonably calculated to lead to the discovery of admissible evidence.

### **Interrogatory 21**

Interrogatory 21 asks for a list of “each and every judgment and settlement entered against the Coleman Company for death or injury from carbon monoxide from any Coleman portable propane radiant heater”.<sup>24</sup> Coleman generally objects on the grounds that the request is overly broad, unduly burdensome and seeks irrelevant information.<sup>25</sup> Defendant also challenges the interrogatory to the extent that it seeks information regarding judgments or settlements related to products other than the Powermate 5017 radiant heater currently at issue in this action.<sup>26</sup>

Recognizing the overlap between this request and Interrogatory Number 19, defendant answers that no judgments or settlements have been entered against it for any carbon monoxide incidents involving the Powermate 5017.<sup>27</sup>

As covered in interrogatory 19, information pertaining to lawsuits involving both the Powermate 5017 and other Coleman heaters is relevant to the case. While general information pertaining to judgments or settlements may be relevant, non-public specifics regarding judgments, settlement negotiations or amounts negotiated is not

---

<sup>24</sup>Document Number 32-1, pg. 5.

<sup>25</sup>Document Number 32-2, pg. 19.

<sup>26</sup>Document Number 32-2, pg. 19.

<sup>27</sup>Document Number 32-2, pg. 20.

relevant.

### **Interrogatory 22**

Interrogatory 22 requests information surrounding the date when Coleman began to attach or include carbon monoxide warnings on the PowerMate 5017 propane heater, “or any other similar Coleman heater”.<sup>28</sup> Along with its general objections, Coleman challenges the interrogatory in that it seeks warning information on products other than the Powermate 5017 radiant heater.<sup>29</sup>

Coleman answers the interrogatory as to the PowerMate 5017 warnings, but fails to provide warning information pertaining to other Coleman heaters.<sup>30</sup> For purposes of discovery, warning information on other Coleman heater is relevant or is reasonably calculated to lead to the discovery of admissible evidence.

### **Interrogatory 26**

Interrogatory 26 seeks the identification of any changes made to the PowerMate lantern after the time of the original sale along with any information on the testing of similar Coleman propane lanterns.<sup>31</sup> Coleman responds indicating it has not yet had an opportunity to test the incident lantern but indicates it will produce “any responsive documents in its custody, possession or control, if and when it identifies such

---

<sup>28</sup>Document Number 32-1, pg. 5.

<sup>29</sup>Document Number 32-2, pg. 20.

<sup>30</sup>Document Number 32-2, pg. 20-21.

<sup>31</sup>Document Number 32-1, pg. 6.

responsive documents.”<sup>32</sup>

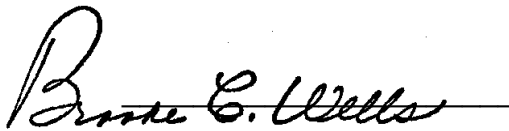
To the extent that the testing information sought on similar Coleman propane lanterns plaintiffs is not covered under the scope of a prior interrogatory, for discovery purposes it is relevant or reasonably calculated to lead to the discovery of admissible evidence.

### **RULING**

For the reasons now stated, the Court rules as follows and GRANTS plaintiff’s motion to compel discovery as set forth herein. Of note, plaintiffs request, as set forth in Interrogatory 21, is narrowed to only include public information on relevant judgments or settlements. Additionally, Plaintiffs’ request for attorney fees is denied.

DATED this 16th day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Brooke C. Wells", followed by a horizontal line.

Brooke C. Wells  
United States Magistrate Judge

---

<sup>32</sup>Document Number 32-2. pg. 22-23.

Lorraine P. Brown (5189)

SMITH KNOWLES, P.C.

4723 Harrison Blvd., Suite 200

Odgen, UT 84403

Telephone: (801) 476-0303

Attorney for Plaintiff

FILED  
U.S. DISTRICT COURT

2011 NOV 15 P 1:42

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

SO ORDERED

*Dee Benson*

DEE BENSON  
United States District Judge

Date 11.14.11

Arthur F. Sandack (#2854)

8 East Broadway, Suite 411

Salt Lake City, UT 84111

Telephone: (801) 595-1300

Attorney for Defendant IBEW Local 57

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

ANDREW JORGENSEN

Plaintiff,

v.

TREES ACQUISITION, INC., a Utah  
Corporation; and INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCAL UNION 57,

Defendants.

**JOINT MOTION TO DISMISS  
DEFENDANT INTERNATIONAL  
BROTHERHOOD OF  
ELECTRICAL WORKERS,  
LOCAL 57**

Case No. 1:11-cv-098

Judge Dee Benson

Comes Now Plaintiff ANDREW JORGENSEN and Defendant  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL  
UNION 57(hereinafter, "Union"), by and through their respective counsel and

pursuant to Rule 41(a)(2) jointly move the court to dismiss the Union from this action with prejudice at the plaintiff's request for the reason that said parties have settled any and all claims out of which plaintiff's action arises. This Motion is supported by the attached memorandum of law and affidavit of Plaintiff's counsel, attached hereto.

Dated this 21<sup>st</sup> day of October, 2011.

s/ \_\_\_\_\_  
Lorraine R. Brown  
Attorney for Plaintiff

s/ \_\_\_\_\_  
Arthur F. Sandack  
Attorney for Defendant Union

### **CERTIFICATE OF DELIVERY**

I hereby certify that on the 20<sup>th</sup> day of October, 2011, I caused to be electronically filed and served via the Courts CM/ECF system the foregoing Joint Motion To Dismiss International Brotherhood of Electrical Workers, Local 57 to the following:

Arthur F. Sandack (#2854)  
8 East Broadway, Suite 411  
Salt Lake City, UT 84111

Robert R. Wallace  
Christian S. Collins  
Michael D. Johnston  
Kirton and McConkie, P.C  
60 East South Temple, Suite 1800  
Salt Lake City, Utah 84111

United States Probation Office  
for the District of Utah

Report on Offender Under Supervision

Name of Offender: **Anthony Jerez**

Docket Number: **2:01-CR-00385-001-DAK**

Name of Sentencing Judicial Officer: **Honorable Dale A. Kimball**  
**Senior U.S. District Judge**

Date of Original Sentence: **December 21, 2001**

Original Offense: **Armed Bank Robbery; Brandishing a Firearm During a Crime of Violence**

Original Sentence: **80 Months BOP/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **August 18, 2010**

SUPERVISION SUMMARY

On November 8, 2011, the defendant received a citation for Possession of a Controlled Substance. The defendant was a passenger in a vehicle that was stopped by police and a small amount of marijuana was found on his seat. The defendant indicated he had been smoking marijuana and will plead guilty to the charge in state court. He additionally indicated he needed help and requested he be allowed to participate in substance abuse treatment. The defendant was advised he would be referred for substance abuse treatment and that the frequency of his drug testing would be increased. He was also warned that any positive drug tests would result in violation proceedings.

In an attempt to provide the defendant with every opportunity to be successful on supervised release, it is respectfully recommended that no further action be taken by the Court. If there are subsequent drug tests that are positive for illicit substances, a petition will be submitted to the Court requesting a warrant.

If the Court desires more information or another course of action, please contact me at 801-535-2734.

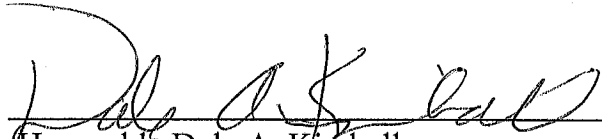
I declare under penalty of perjury that the foregoing is true and correct.



Matt Morrill  
U.S. Probation Officer  
Date: November 15, 2011

**THE COURT:**

- ☒ Approves the request noted above  
☐ Denies the request noted above  
☐ Other

  
\_\_\_\_\_  
Honorable Dale A. Kimball  
Senior U.S. District Judge

Date: November 16, 2011



UNITED STATES DISTRICT COURT  
U.S. DISTRICT COURT  
Central District of Utah

UNITED STATES OF AMERICA v. RAYMOND JOSEPH VIGIL Judgment in a Criminal Case

v.

(For Revocation of Probation or Supervised Release)

DISTRICT OF UTAH

Raymond Joseph Vigil BY:

DEPUTY CLERK

Case No.

DUTX 2:05CR00635-001 TC

USM No.

13087-081

Henri Sisneros

Defendant's Attorney

**THE DEFENDANT:**

- ☒ admitted guilt to violation of condition(s) 4 and 5 of the Petition of the term of supervision.  
☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
4.	On 9/15/2011, the defendant submitted a urine sample, which tested positive for methamphetamine.	
5.	On 7/15/, 7/26, 8/8, 8/30 and 9/14/2011, the defendant failed to submit to drug and/or alcohol testing as directed by the USPO.	

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☒ The defendant has not violated condition(s) Allegations 1,2,3 and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 0844

Defendant's Year of Birth: 1952

City and State of Defendant's Residence:  
Salt Lake City, Utah

11/09/2011

Date of Imposition of Judgment

*Tena Campbell*

Signature of Judge

Tena Campbell United States District Court Judge

Name and Title of Judge

11-16-2011

Date

DEFENDANT: Raymond Joseph Vigil  
CASE NUMBER: DUTX 2:05CR00635-001 TC

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

12 Months and 1 Day

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Raymond Joseph Vigil  
CASE NUMBER: DUTX 2:05CR00635-001 TCV

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Raymond Joseph Vigil  
CASE NUMBER: DUTX 2:05CR00635-001 TC

### **SPECIAL CONDITIONS OF SUPERVISION**

1. All previously imposed special conditions are reimposed.
2. The defendant shall reside in a residential reentry center under a Public Law placement for a period of up to 180 days, with release for work, education, medical, religious services, treatment or other approved release as deemed appropriate by the USPO or residential reentry center.

DEFENDANT: Raymond Joseph Vigil  
CASE NUMBER: DUTX 2:05Cr00635-001 TC

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$	\$	\$ Reinstated

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0	\$ _____ 0	
--------	------------	------------	--

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution or a fine more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Raymond Joseph Vigil  
CASE NUMBER: DUTX 2:05CR00635-001 TC

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☐ Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

**The Court orders that Restitution ordered on 7/28/2006, for the original offense, be reinstated.**

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

MARBLE POINT ENERGY LTD, a  
Canadian corporation,

Plaintiff,

vs.

MAJESTIC CAPITAL GROUP, LLC, a Utah  
limited liability company, et al.,

Defendants.

---

MAJESTIC CAPITAL GROUP, LLC, a Utah  
limited liability company, et al.,

Third-Party Plaintiffs,

vs.

MARK H. KLETTER, et al.,

Third-Party Defendants.

ORDER TO SHOW CAUSE

Case No. 2:06-CV-487 TS


This matter was administratively closed on September 9, 2009, at the request of Plaintiff. On September 9, 2010, this matter was re-opened, again at the request of Plaintiff. Since this case was re-opened over a year ago no action has taken place.

Plaintiff is directed to respond in writing within fourteen (14) days from the date of this Order to inform the Court of the status of this case and its intention to proceed.

SO ORDERED.

DATED November 17, 2011.

BY THE COURT:



---

TED STEWART  
United States District Judge



---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

<b>THE UNIVERSITY OF UTAH,</b>	)	<b>Case No. 2:06-cv-00595-DAK</b>
	)	
<b>Plaintiff,</b>	)	<b>2:07-cv-00910-DAK</b>
	)	<b>(consolidated)</b>
<b>vs.</b>	)	
	)	<b>Judge Dale A. Kimball</b>
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	<b>ORDER GRANTING JOINT MOTION</b>
	)	<b>TO REOPEN THIS CASE FOR THE</b>
<b>JOHN E. BUTLER, et al.</b>	)	<b>LIMITED PURPOSE OF FILING</b>
<b>Plaintiffs,</b>	)	<b>PLAINTIFF UNIVERSITY OF</b>
	)	<b>UTAH'S SECOND AMENDED</b>
<b>vs.</b>	)	<b>COMPLAINT</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

---

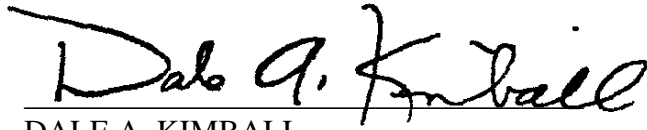
Before the Court is the parties' Joint Motion to Reopen This Case for the Limited Purpose of Filing Plaintiff University of Utah's Second Amended Complaint (the "Joint Motion"). For good cause shown, it is hereby ORDERED:

1. That the Joint Motion is granted;
2. That the above-captioned case is hereby RE-OPENED for the limited purpose of allowing Plaintiff University of Utah to file a Second Amended Complaint; and
3. Plaintiff University of Utah's Second Amended Complaint attached as Exhibit 1 to the parties' Joint Motion shall be filed by Plaintiff as soon as possible.

Although the parties agreed to deem it as filed, the court requires the complaint to be filed as its own document with its own docket number separate from being an attachment to the motion to reopen the case.

DATED this 16th day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball". The signature is written in a cursive, flowing style. The first name "Dale" is written with a large, prominent "D". The middle initial "A." is written in a smaller, more compact script. The last name "Kimball" is written with a large, prominent "K" and a long, sweeping tail that extends to the right.

DALE A. KIMBALL

United States District Judge

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**ISAAC MORLEY,**

Defendant.

**ORDER TERMINATING  
SUPERVISED RELEASE**

**Case No. 2:07CR167DAK**

**Judge Dale A. Kimball**

---

Defendant, Isaac Morley, has filed a motion for early termination of supervised release. On December 16, 2009, Defendant was sentenced to 36 months probation. Therefore, Defendant has served nearly two years of his three-year term.

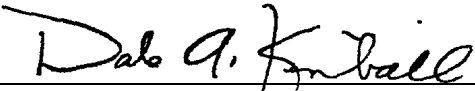
Pursuant to 18 U.S.C. § 3564(c), after considering the factors set forth in Section 3553(a), the court may terminate a term of supervised release “at any time after the expiration of one year of probation . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.” The factors to be considered in Section 3553(a) are those factors to be considered in imposing a sentence, including “the nature and circumstances of the offense and the history and characteristics of the defendant,” the applicable sentencing guidelines and any policy statements issued by the Sentencing Commission, and the need for the sentence imposed to promote respect for the law, to provide just punishment, to deter other criminal conduct, and to provide the defendant with needed services. *See* 18 U.S.C. § 3553(a).

Defendant's motion for early termination of supervised release is supported by his United States Probation Officer and the Assistant United States Attorney who prosecuted the case. The court has spoken with his probation officer and learned that Defendant has fulfilled the requirements of his probation and has had no difficulties. Despite losing his law license, Defendant has secured employment in a new field and maintained that employment. Defendant is also focusing on and continuing to build strong family relationships. The court finds that Defendant is unlikely to repeat his offense. Based on Defendant's conduct, the court finds that an early termination of supervised release is warranted.

Accordingly, the court grants Defendant's motion for early termination of supervised release.

DATED this 17th day of November 2011.

BY THE COURT:

  
\_\_\_\_\_  
DALE A. KIMBALL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT  
2011 NOV 14 P 3:37

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

SEEPA LEAHONA SCHWENKE

Defendant(s).

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

Case No. 2:08cr00003-001 TS

RISE PROGRAM ORDER


Upon recommendation of the RISE screening committee and the execution of the Rise Program Agreement by the defendant,

It is hereby ordered that Seepa Leahona Schwenke be admitted to the RISE program. Further proceedings in this matter will be governed by the RISE program protocol. The management of this defendant is referred to the RISE Program Magistrate Judge Brooke C. Wells , as authorized by 28 U.S.C. 636(b)(3) and (b)(4), for all further hearings. The RISE Program Judge may order sanctions which are outlined in the RISE program.

Upon notification by the RISE Program Judge that Seepa Leahona Schwenke has failed to meet his/her responsibilities under the program, the defendant will be removed from the program and subject to possible additional sanctions.

DATED this 14<sup>th</sup> day of November, 2011.

BY THE COURT:

  
\_\_\_\_\_  
Judge Ted Stewart  
United States District Judge

KATHRYN N. NESTER, Federal Public Defender  
BENJAMIN C. MCMURRAY, Assistant Federal Defender (#9926)  
FEDERAL PUBLIC DEFENDER  
DISTRICT OF UTAH  
Attorneys for Defendant  
46 West Broadway, Suite 110  
Salt Lake City, Utah 84101  
Telephone: (801) 524-4010  
Fax: (801) 524-4060

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
CURTIS BRAD CORDERY,  
  
Defendant.

ORDER FOR TEMPORARY FURLOUGH

Case No. 2:08-CR-467 CW

Based on motion of defendant, Curtis Cordery, and good cause having been shown:

It is hereby ORDERED that the defendant be allowed a temporary furlough to attend the funeral services of his grandfather Joseph Alden Camp.

It is further ORDERED that the defendant be released from the custody of the United States Marshals Service at the Davis County Jail on Friday, November 18, 2011, at 7:30 a.m. and

that he be permitted to return to custody at Davis County Jail no later than Friday, November 18, 2011, at 6:30 p.m.

DATED this 17th day of November, 2011.

BY THE COURT:

A handwritten signature in blue ink, reading "Clark Waddoups", is written over a horizontal line.

HONORABLE CLARK WADDOUPS  
United States District Judge

DEIRDRE A. GORMAN (#3651)  
Attorney for Defendant KINIKINI  
205 26<sup>th</sup> Street, Suite 32  
Bamberger Square Building  
Ogden, Utah 84401  
Telephone: (801) 394-9700  
dagorman@qwestoffice.net

FILED  
U.S. DISTRICT COURT

2011 NOV 15 P 3:12

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA, /

Plaintiff, /

**ORDER CONTINUING  
SENTENCING**

vs. /

VAINGA KINIKINI, et al., /

Defendant. /

Case No. 2:08-CR-07580-W

**XTC**

BASED UPON the Joint Motion to Continue Sentencing filed by Defendant's counsel,  
stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that Defendant's sentencing is continued from November 16,  
2011 and shall be rescheduled to a date convenient for all parties after March 25, 2012. The ends of  
justice will be served in granting this continuance. *Sentencing reset to 3/27/2012 @ 2:30 pm*

DATED this 15 day of November, 2011.

BY THE COURT:

*Clark Waddoups*  
CLARK WADDOWPS  
United States District Court Judge



FILED  
U.S. DISTRICT COURT

2011 NOV 17 P 2:50

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VILIAMI LOUMOLI, and  
JOHN TUAKALAU,

Defendants.

:  
:  
ORDER GRANTING LEAVE OF  
COURT TO FILE A DISMISSAL

:  
:  
Case No. 2:08 CR 758

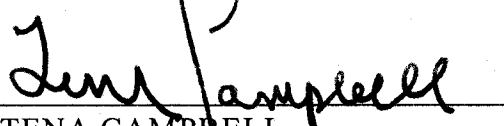
:  
:  
Judge Tena Campbell

---

Based upon the motion of the United States of America, the Court hereby grants  
leave under Rule 48(a) of the Federal Rules of Criminal Procedure for the dismissal of the  
Second Superseding Indictment against Viliami Loumoli and John Tuakalau.

DATED this 17 day of November, 2011.

BY THE COURT:



TENA CAMPBELL

United States District Court Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

BY: \_\_\_\_\_  
DEPUTY CLERK

FRANCES M. FLOOD,  
  
Plaintiff,

v.

CLEARONE COMMUNICATIONS, INC., a  
Utah Corporation,  
  
Defendant.

**ORDER REQUESTING  
SUPPLEMENTAL BRIEFING**

Case No. 2:08-cv-00631-CW

Judge Clark Waddoups

The parties appeared before the court on November 16, 2011 on Defendant ClearOne Communications, Inc.'s ("ClearOne") motion to turn over escrow monies, for restitution, and to vacate an order granting summary judgment on Plaintiff Frances M. Flood's ("Flood") breach of contract claim. The court requests that the parties submit additional briefing on issues discussed in the hearing as follows:


1. Whether the Restatement (Third) of Restitution and Unjust Enrichment, which was adopted after ClearOne's initial motion, should affect the court's analysis;
2. Whether the final conviction of Flood in her criminal trial allows the order of summary judgment to be vacated as moot as a result of Flood's undertaking; and
3. Whether the Tenth Circuit ruling vacating the order placing the funds in escrow requires the court to return the funds to ClearOne regardless of whether ClearOne may have breached the employment separation agreement.

ClearOne shall submit their initial supplemental brief on or before November 30, 2011.

Flood shall then file a responding brief on or before December 14, 2011. If ClearOne finds it necessary to reply to Flood's responding brief, it shall do so on or before December 21, 2011.

SO ORDERED this 16<sup>th</sup> day of November, 2011.

BY THE COURT:

  
Clark Waddoups  
United States District Judge

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**TOM TIBBS, et al.**

**Plaintiffs,**

**v.**

**JASON K. VAUGHN, et al.**

**Defendants.**

**MEMORANDUM DECISION AND  
ORDER**

**Case No. 2:08cv787**

**District Judge Tena Campbell**

**Magistrate Judge Paul M. Warner**

---

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Tena Campbell pursuant to 28 U.S.C. § 636(b)(1)(A).<sup>1</sup> Before the court are (1) Jason Vaughn’s (“Mr. Vaughn”) motion to stay proceedings and for a protective order;<sup>2</sup> (2) Tom Tibbs, Peggy Tibbs, and Home Advantage, LLC’s (collectively, “Plaintiffs”) motion for sanctions against Melanie Vaughn (“Ms. Vaughn”);<sup>3</sup> and Plaintiffs’ motion to amend the scheduling order.<sup>4</sup> The court has carefully reviewed the motions and memoranda submitted by the parties. Pursuant to civil rule 7-1(f) of the United States District Court for the District of Utah Rules of Practice, the court

---

<sup>1</sup> See docket no. 117.

<sup>2</sup> See docket no. 123.

<sup>3</sup> See docket no. 131.

<sup>4</sup> See docket no. 135.

elects to determine the motions on the basis of the written memoranda and finds that oral argument would not be helpful or necessary. *See* DUCivR 7-1(f).

**(1) Mr. Vaughn’s Motion to Stay Proceedings and for a Protective Order**

Mr. Vaughn moves this court to stay the proceedings in this matter and for a protective order. Mr. Vaughn argues that this matter should be stayed pending the outcome of a criminal matter before District Judge Clark Waddoups (“Koerber criminal case”), *see* USA v. Koerber, Case No. 2:09-cr-00302, and/or the potential indictment of Mr. Vaughn. Specifically, Mr. Vaughn seeks to “preserve [his] rights, protections, and privileges under the Fifth Amendment to the Constitution of the United States and the Constitution of the State of Utah, Article 1 §§ 7 & 12.”<sup>5</sup> Mr. Vaughn states that Plaintiffs filed the instant case against him, Ms. Vaughn, and others (collectively, “Defendants”) related to loans made by Plaintiffs regarding the business of Founders Capital, LLC. Mr. Vaughn asserts that requiring him to defend himself in this civil lawsuit while the Koerber criminal case, a matter “regarding the exact same businesses and transactions contemplated in the present case,”<sup>6</sup> is pending could implicate his Fifth Amendment right against self-incrimination.

Plaintiffs contend that Mr. Vaughn’s Fifth Amendment rights are not implicated because he has already provided discovery and disclosed facts in both cases such that he has waived any privilege he may have had. Specifically, Plaintiffs assert that Mr. Vaughn has given testimony in

---

<sup>5</sup> Docket no. 124 at 13-14.

<sup>6</sup> *Id.* at 3.

the Koerber criminal case about his participation with FranklinSquires, Founders Capital, and Freestyle Holdings, as well as testifying that he gave over \$3 million in loans to Rick Koerber.

Determining whether to grant or deny a motion to stay in a civil matter “until fear of criminal prosecution is gone” is a discretionary matter for the trial court. *Mid-America’s Process Serv. v. Ellison*, 767 F.2d 684, 687 (10th Cir. 1985). “When deciding whether the interests of justice seem to require a stay, the court must consider the extent to which a party’s Fifth Amendment rights are implicated.” *Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070, 1080 (10th Cir. 2009). “However, the extent to which [a party’s] Fifth Amendment rights are implicated is . . . only one consideration to be weighed against others. Hence, [a] movant must carry a heavy burden to succeed in such an endeavor.” *Wirth v. Taylor*, No. 2:09-cv-127 TS, 2011 WL 222323, at \*1 (D. Utah Jan. 21, 2011) (quotations and citations omitted).

While the Fifth Amendment ““does not preclude a witness from testifying voluntarily in matters which may incriminate him,”” the privilege must be affirmatively claimed or the witness ““will not be considered to have been “compelled” within the meaning of the Amendment.”” *Id.* (quoting *United States v. Monia*, 317 U.S. 424, 427 (1943)). A party seeking a stay must demonstrate “a clear case of hardship or inequity if even a fair possibility exists that a stay would damage another party.” *Creative Consumer Concepts, Inc.*, 563 F.3d at 1080 (quotations and citation omitted).

In determining whether to grant a stay, courts often employ “some combination” of the following six factors:

(1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the case, including whether the defendants have been indicted; (3) the interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; and (6) the public interest.

*Hilda M. v. Brown*, No. 10-cv-02495-PAB-KMT, 2010 WL 5313755, at \*3 (D. Colo. Dec. 20, 2010).

The court has reviewed the facts of the instant case in relation to the above-mentioned factors and has determined that a stay is not warranted. While the court notes that the issues in the Koerber criminal case and the issues in this civil matter do overlap, “the fact that the government is not a plaintiff in the civil action weighs against a stay because there is no risk that the government will use the broad scope of civil discovery to obtain information for use in the criminal prosecution.” *Wirth*, 2011 WL 222323, at \*2 (quoting *United States ex rel. Shank v. Lewis Enters., Inc.*, No. 04-cv-4105-JPG, 2006 WL 1064072, at \*4 (S.D. Ill. 2006)). Furthermore, Mr. Vaughn has not been indicted. Courts generally decline to grant a stay in a civil matter where a defendant is under criminal investigation but has not been indicted. *See In re CFS-Related Sec. Fraud Litig.*, 256 F. Supp. 2d 1227, 1238 (N.D. Okla. 2003).

The court further recognizes that this case has been pending since 2008 and that the discovery deadline has passed. While Plaintiffs have an interest in the “expeditious resolution” of this matter, Mr. Vaughn has a “significant interest in avoiding the quandary of choosing between waiving [his] Fifth Amendment rights or effectively forfeiting the civil case.” *Hilda M.*, 2010 WL 5313755, at \*5 (quotations and citation omitted). The court also “has a strong interest

in keeping litigation moving to conclusion without unnecessary delay.” *In re CFS-Related Sec. Fraud Litig.*, 256 F. Supp. 2d at 1242. Likewise, the public has an interest in the prompt resolution of both civil litigation and the prosecution of criminal cases. *See id.* The level of the public’s interest in granting a stay is measured by the interest of the United States Attorney has in the request for a stay. *See id.* Because the United States Attorney has not joined in the request for a stay, this factor weighs in favor of denying Mr. Vaughn’s motion.

In addition, at a February 23, 2011 hearing in the Koerber criminal case at which Mr. Vaughn testified, Mr. Vaughn was informed by the court that he may be under investigation for actions related to that case and advised him of his Fifth Amendment privilege. Specifically, the court stated,

The United States has indicated that you may be under investigation for actions related to this particular case and your involvement in it. You have the right to exercise your Fifth Amendment privilege and have the representation of counsel if you choose. I want to make sure that you’re fully advised of those rights and if you choose to proceed you may subject yourself to cross-examination by the United States as to bias you may have in favor of Mr. Koerber. Do you understand that?<sup>7</sup>

Mr. Vaughn indicated that he understood his right to invoke his privilege but that he nonetheless wished to proceed. Thus, the court concludes that Mr. Vaughn has waived his Fifth Amendment privilege. Once a party “elects to waive his privilege . . . he is not permitted to stop, but must go on and make a full disclosure’ because the ‘[d]isclosure of a fact waives the privilege as to details’ as well.” *Wirth*, 2011 WL 222323, at \*1 (quoting *Rogers v. United States*, 340 U.S. 367, 373 (1951)).

---

<sup>7</sup> Docket no. 124, Exhibit 1 at 8.



After balancing the equities at issue here, the court has determined that a stay of this civil case is not warranted. Accordingly, Mr. Vaughn's motion for a stay of these proceedings and a protective order is **DENIED**.

## **(2) Plaintiffs' Motion for Sanctions Against Ms. Vaughn**

Plaintiffs seek sanctions against Ms. Vaughn for failing to obey this court's May 11, 2011 order ("Order") that she provide full responses to the requested discovery. The court ordered Ms. Vaughn to respond within thirty (30) days of the date of the Order. Ms. Vaughn has apparently failed to provide the requested discovery and has merely indicated that she "is without knowledge sufficient to answer any of the interrogatories."<sup>8</sup> Moreover, Ms. Vaughn has failed to oppose the instant motion and the time for doing so has passed. *See* DUCivR 7-1(b)(4)(B); *see also* DUCivR 7-1(d) ("Failure to respond timely to a motion may result in the court's granting the motion without further notice."). The court also notes, however, that Ms. Vaughn is proceeding pro se in this matter. While courts "liberally construe pro se pleadings, [that] status does not relieve [a party] of the obligation to comply with procedural rules." *Murray v. City of Tahlequah*, 312 F.3d 1196, 1199 n.3 (10th Cir. 2002).

Rule 37 of the Federal Rules of Civil Procedure governs sanction awards for failure to cooperate in discovery. It provides in relevant part:

If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not

---

<sup>8</sup> Docket no. 132, Exhibit D at 2.

order this payment if: (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(5)(A). Upon review of the Plaintiffs' submissions, the court concludes that (1) Plaintiffs attempted in good faith to obtain the requested discovery without resorting to court intervention, (2) Ms. Vaughn's failure to provide the discovery was not substantially justified, and (3) there are not other circumstances that would make such an award unjust. *See id.*

The court has determined that Plaintiffs are entitled to an award of sanctions against Ms. Vaughn under rule 37(a)(5)(A). At the same time, the court recognizes that before any sanctions can be imposed against Ms. Vaughn under rule 37(a)(5)(A), she must be provided with an opportunity to be heard on that issue. *See id.* In order to fully inform the court on the issue, and to provide Ms. Vaughn with the requisite opportunity to be heard, the parties are directed to make the following filings. Within fourteen (14) days of the date of this order, Plaintiffs' shall file with the court an affidavit and cost memorandum detailing the reasonable expenses, including attorney fees, incurred in bringing the instant motion. Within fourteen (14) days of the filing date of Plaintiffs' affidavit and cost memorandum, Ms. Vaughn shall file a written submission detailing her position on the issue. After receipt of those filings, the court will make a final determination concerning the award of sanctions against Ms. Vaughn.

Based on the foregoing, Plaintiffs' motion for sanctions against Ms. Vaughn is **GRANTED.**

**(3) Plaintiffs' Motion to Amend the Scheduling Order**

Plaintiffs seek to amend the amended scheduling order entered in this case on May 11, 2011.<sup>9</sup> Mr. Vaughn and Ms. Vaughn have failed to oppose or otherwise respond to Plaintiffs' motion and the time for doing so has passed. *See* DUCivR 7-1(b)(4)(B); *see also* DUCivR 7-1(d) ("Failure to respond timely to a motion may result in the court's granting the motion without further notice."). Accordingly, and for the reasons set forth in Plaintiffs' motion and supporting memorandum, Plaintiffs' motion to amend the scheduling order is **GRANTED**.

Upon entry of the instant order, the court will issue a second amended scheduling order to govern this matter.

**IT IS SO ORDERED.**

DATED this 17th day of November, 2011.

BY THE COURT:



---

PAUL M. WARNER  
United States Magistrate Judge

---

<sup>9</sup> *See* docket no. 121.

ERIK A. CHRISTIANSEN (7372)  
CHRISTINA JEPSON SCHMUTZ (7301)  
PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, UT 84145-0898  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111  
Attorneys for Plaintiffs

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

ALBERT WIRTH, on behalf of himself and the  
Albert J. Wirth Trust, and FLORENCE T.  
WIRTH,

Plaintiffs,

vs.

ROGER E. TAYLOR, RICHARD T. SMITH,  
FRANKLIN FORBES ADVISORS, LP., LBS  
FUND, L.P., LBS ADVISORS, INC., SUMMIT  
CAPITAL ADVISORS, INC., JEFFREY B.  
ROYLANCE, JENNETTE L. ROYLANCE,  
GJB ENTERPRISES, INC., GERALD BURKE  
a/k/a G.J. BURKE, RICHARD C. SCHMITZ,  
KARI M. LAITINEN, NEWTON ALLEN  
TAYLOR and CONSILIUM TRADING  
COMPANY, LLC,

Defendants.

---

ANNETTE KAY DONNELL, an individual,

Plaintiff,

vs.

ROGER TAYLOR, et al.

Defendants.

---

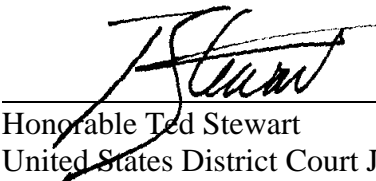
**ORDER GRANTING PLAINTIFFS  
ALBERT WIRTH AND FLORENCE T.  
WIRTH'S MOTION TO DISMISS  
ROGER E. TAYLOR, RICHARD T.  
SMITH, GJB ENTERPRISES, INC.,  
GERALD BURKE, NEWTON ALLEN  
TAYLOR AND CONSILIUM TRADING  
COMPANY, LLC**

Case No. 2:09-cv-127

Judge: Hon. Ted Stewart

This matter having come before the Court pursuant to Plaintiffs Albert Wirth's and Florence T. Wirth's Motion to Dismiss, and good cause appearing, the Court hereby ORDERS that Plaintiffs Albert Wirth and Florence T. Wirth's claims against defendants Roger E. Taylor, Richard T. Smith, GJB Enterprises, Inc., Gerald Burke a/k/a G.J. Burke, Newton Allen Taylor and Consilium Trading Company are hereby DISMISSED without prejudice. No other claims or parties are in anyway impacted or affected by this Order.

DATED this 17<sup>th</sup> day of November, 2011.



---

Honorable Ted Stewart  
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

JOHN FITZEN AND MARIA FITZEN,  
Plaintiffs,

vs.

ARTSPACE AFFORDABLE HOUSING,  
L.P., ARTSPACE RUBBER COMPANY,  
L.C., EVERGREEN MANAGEMENT  
GROUP, LLC, THE LAW OFFICES OF  
KIRK A. CULLIMORE, LLC,  
Defendants.

ORDER ON PENDING MOTIONS

Case No. 2:09-CV-470 TS

This matter is before the Court on Defendants' Motion to Dismiss Kirk A. Cullimore and Thomas Wood for Lack of Personal Jurisdiction,<sup>1</sup> Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction,<sup>2</sup> and Plaintiffs' Motion for Extension of Time to Oppose Defendants' Motion to Dismiss.<sup>3</sup> The Court held a hearing on these Motions on November 17, 2011. In accordance with, and for the reasons provided in the hearing, it is hereby

ORDERED that Plaintiffs' cause of action under 42 U.S.C. § 1983 is DISMISSED. It is further

---

<sup>1</sup> Docket No. 54.

<sup>2</sup> Docket No. 66.

<sup>3</sup> Docket No. 69.

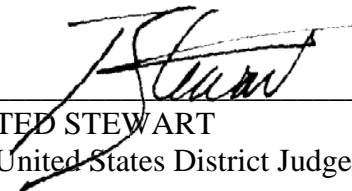
ORDERED that Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket No. 66) is GRANTED WITHOUT PREJUDICE to Plaintiffs filing an Amended Complaint within thirty (30) days of this Order. Plaintiffs are directed not to reassert issues that they have previously conceded or that have already been ruled upon by the Court. It is further

ORDERED that Defendant's Motion to Dismiss Kirk A. Cullimore and Thomas Wood for Lack of Personal Jurisdiction (Docket No. 54) is DENIED AS MOOT. It is further

ORDERED that Plaintiff's Motion for Extension of Time to Oppose Defendants Motion to Dismiss (Docket No. 69) is DENIED AS MOOT.

DATED November 17, 2011.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

VELOCITY PRESS, INC., a Utah  
corporation,

Plaintiff,

vs.

KEY BANK, N.A., Q.A.M., INC., a Virginia  
corporation dba SANDEN USA, INC.;  
Q.A.M., INTERNATIONAL, a Nevada  
corporation; ROBERT PITEL, an individual;  
DOUGLAS JUSTUS, an individual; DOE  
DEFENDANTS I through X,

Defendants.


ORDER DIRECTING RESPONSE TO  
OBJECTION TO MAGISTRATE  
JUDGE'S ORDER

Case No. 2:09-CV-520 TS

Pursuant to DUCivR 72-3(b), Defendants are directed to respond to the Objection to the  
Magistrate Judge's November 3, 2011 Order (Docket No. 234) within 14 days of this Order.

DATED November 17, 2011.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge



Bradley J. Dixon (Utah Bar No. 11354)  
STOEL RIVES LLP  
101 S. Capitol Boulevard, Suite 1900  
Boise, Idaho 83702  
Telephone: (208) 389-9000  
Fax Number: (208) 389-9040

Lauren A. Shurman (Utah Bar No. 11243)  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111  
Telephone: (801) 328-3131  
Facsimile: (801) 578-6999

Attorneys for Defendants First Horizon Home Loans, a division of First Tennessee Bank National Association, and Mortgage Electronic Registration Systems, Inc.

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

JAMES McINNIS,

Plaintiff,

v.

FIRST HORIZON HOME LOANS  
("FHHL"); MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, ("MERS");  
and JOHN DOES 1 THROUGH 5,

Defendants.

**ORDER GRANTING MOTION TO  
DISMISS WITH PREJUDICE**

Case: 2:09cv00585

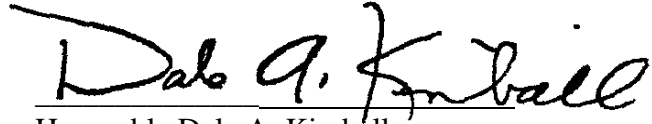
Honorable Dale A. Kimball.

The Defendants having filed a Motion for Dismissal With Prejudice in the above-captioned matter, and the Court being fully advised,

IT IS HEREBY ORDERED, that the above-entitled matter is hereby dismissed with prejudice and Plaintiff is ordered to pay Defendants \$2,500 for fees and costs, which Defendants incurred in bringing their Motion to Enforce Settlement Agreement and For Sanctions Against Plaintiff for Bad Faith Refusal to Comply With Settlement Agreement.

Dated this 15<sup>th</sup> day of November, 2011.

BY THE COURT

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, flowing style. The first name "Dale" is prominent, followed by "A." and then "Kimball".

Honorable Dale A. Kimball

FILED  
U.S. DISTRICT COURT

2011 NOV 17 A 9:23

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

RICK L. ROSE (5140)  
KRISTINE M. LARSEN (9228)  
**RAY QUINNEY & NEBEKER P.C.**  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500  
[rrose@rqn.com](mailto:rrose@rqn.com)  
[klarsen@rqn.com](mailto:klarsen@rqn.com)

*Attorneys for Plaintiff Patterson-UTI Drilling Company, LLC*

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

PATTERSON-UTI DRILLING COMPANY,  
LLC f/k/a PATTERSON-UTI DRILLING  
COMPANY, LP, LLP,

Plaintiff,

v.

TRI-STATE TRUCKING, LLC; MB  
CONSTRUCTION SERVICES, INC.; MIKE  
BRADY CORPORATION and SUNLAND  
CONSTRUCTION, INC. a/k/a SUNLAND  
CONSTRUCTION OF EUNICE, INC.

Defendants.

**THIRD AMENDED  
SCHEDULING ORDER**

Civil No. 2:09CV01045

Judge: Dee Benson

---

The Court, having reviewed the Joint and Stipulated Motion to Amend the Scheduling Order, and finding that the motion is supported by good cause, hereby enters this Third Amended Scheduling Order. The litigation of this case shall proceed according to the following revised dates:

1. Discovery to be completed by:

Fact Discovery	03/30/12
Expert Discovery	07/30/12
2. Deadline for filing dispositive or potentially dispositive motions 08/30/12
3. Rule 26(a)(2) Reports from Experts:

Plaintiff (Disclosures by 01/30/12)	02/30/12
Defendants (Disclosures by 03/15/12)	04/15/12
Counter reports	05/31/12
4. Rule 26(a)(3) Pretrial Disclosures:

Plaintiff	
Defendants	
5. Special Attorney Conference on or before
6. Settlement Conference
7. Final Pretrial Conference 10/17/12 @ 2:30 p.m.
8. Jury Trial (5 days) 10/29/12 @ 2:30 p.m.

All other dates in the current Scheduling Order may remain unchanged.

DATED this 16 day of Nov, 2011.

BY THE COURT:

  
\_\_\_\_\_  
Judge Dee Benson

1149393

1149393

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

JOYCE ROBINSON,  Plaintiff,  vs.  JOLEE TIBBITTS AND JMT CONCEPTS,  Defendants.	ORDER TO SHOW CAUSE    Case No. 2:09-CV-1149 TS
---	---

Plaintiff filed this action on December 29, 2009. A Certificate of Default was entered against Defendant JMT Concepts on February 12, 2010. However, the Clerk of the Court found that “Defendant Jolee Tibbitts was not served according to the provisions of Rule 4 of the Federal Rules of Civil Procedure.”<sup>1</sup> Therefore, no Certificate of Default was entered against Ms. Tibbitts. Plaintiff attempted to seek default again as to Ms. Tibbitts, but failed to provide documentation of valid service. Since that time, Plaintiff has taken no further action.

Plaintiff is hereby ordered to show cause why the above-captioned case should not be dismissed. Plaintiff is directed to respond in writing within fourteen (14) days from the date of

---

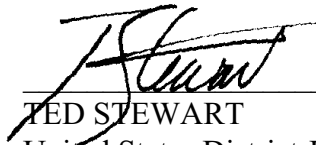
<sup>1</sup>Docket No. 6.

this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

SO ORDERED.

DATED November 17, 2011.

BY THE COURT:



---

TED STEWART  
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

ALBERTO GOMEZ-TALavera,  Petitioner,   vs.  UNITES STATES OF AMERICA,  Respondent.	MEMORANDUM DECISION AND ORDER DENYING PETITIONER'S MOTION UNDER 28 U.S.C. § 2255   Civil Case No. 2:11-CV-1005 TS Criminal Case No. 2:10-CR-806 TS
---	--

This matter is before the Court on Petitioner's Motion Under 28 U.S.C. § 2255. For the reasons discussed below, the Court will deny the Motion.

I. BACKGROUND

On September 1, 2010, Petitioner was named, along with his co-Defendant, in a felony information. Petitioner was charged with manufacture of a controlled substance by cultivation, possession of a firearm in furtherance of a drug trafficking crime, and illegal alien in possession of a firearm. Petitioner pleaded guilty to manufacture of a controlled substance by cultivation and being an illegal alien in possession of a firearm. On March 7, 2011, Petitioner was sentenced to the mandatory minimum term of 120 months.

Petitioner timely filed the instant Motion on October 28, 2011. Petitioner's Motion is written on a standard form, but the section where Petitioner is supposed to state the grounds on which he challenges his conviction has been left blank. Since the filing of his Motion, the Court has received no further correspondence from Petitioner.

## II. DISCUSSION

Proceedings under 28 U.S.C. § 2255 “are used to collaterally attach the validity of a conviction and sentence.”<sup>1</sup> Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts requires a § 2255 motion to “specify all the grounds for relief available to the moving party;” “state the facts supporting each ground;” and “state the relief requested.”<sup>2</sup>

In his Motion, Petitioner sets forth absolutely no grounds for relief, nor does he state any facts or state the relief requested. Simply put, Petitioner provides nothing to the Court, let alone anything that would allow him to collaterally attack his sentence. As a result, the Court must deny Petitioner's Motion.

---

<sup>1</sup>*McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 811 (10th Cir. 1997); *see also* 28 U.S.C. § 2255(a) (“A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.”).

<sup>2</sup>Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 2(b)(1)-(3).



### III. CONCLUSION

Based upon the above, it is hereby

ORDERED that Petitioner's § 2255 Motion (Docket No. 1 in Case No. 2:11-CV-1005 TS) is DENIED for the reasons set forth above. It is further

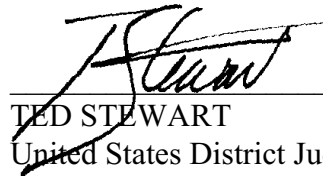
ORDERED that, pursuant to Rule 8(a) of the Rules Governing § 2255 Cases, an evidentiary hearing is not required.

The Clerk of Court is directed to close Case No. 2:11-CV-1005 TS forthwith.

SO ORDERED.

DATED November 17, 2011.

BY THE COURT:



---

TED STEWART  
United States District Judge

**United States District Court**

**DISTRICT OF UTAH**

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

NOV 10 2011  
D. MARK JONES, CLERK  
DEPUTY CLERK

**UNITED STATES OF AMERICA**

**V.**

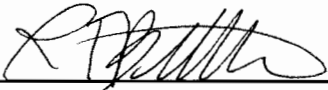
**ORDER OF DISCHARGE  
AND DISMISSAL**

**Mathew R. Rees**

**CASE NUMBER: 2:10-CR-01010-001 RTB**

WHEREAS, the above-named defendant having previously been placed on probation under 18 U.S.C. § 3607 for a period not exceeding one year, and the Court having determined that said defendant has completed the period of probation without violation,

IT IS ORDERED that pursuant to 18 U.S.C. § 3607(a), the Court, without entry of judgment, hereby discharges the defendant from probation and dismisses those proceedings for which probation had been ordered.



Robert T. Braithwaite  
United States Magistrate Judge

11-10-11

Date

2011 NOV 17 P 2:50

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH  
DISTRICT OF UTAH, CENTRAL DIVISION

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER LEE TRASK,

Defendant,

VERNON LEE TRASK,

Petitioner.

FINAL ORDER OF FORFEITURE  
PURSUANT TO SETTLEMENT  
AGREEMENT

Case # 2:10CR01128 TC-SA

JUDGE: Tena Campbell

WHEREAS, on August 18, 2011, this Court entered a Preliminary Order of Forfeiture, ordering the Defendant to forfeit his interest in the:

- Ruger MKIII Hunter .22 caliber handgun, Serial Number: 270-08448
- Taurus PT140 Millenium .40 caliber handgun, Serial Number: SSL 57207
- Browning 9mm handgun, Serial Number: T301261
- U.S. Carbine M-1 rifle, Serial Number: 2972977
- Ruger Mark II .22 caliber handgun, Serial Number: 215-42572
- Ruger 10/22 .22 caliber rifle, Serial Number: 350-58698
- Winchester Ranger 12 gauge shotgun, Serial Number: L1770663
- Winchester .22 cailber rifle, Serial Number: 390306
- 41 Colt Bisley revolver, Serial Number: 239320
- Savage model 24, .22 1r/410 shotgun, Serial Number: None

- Ruger 10/22 .22 caliber rifle, Serial Number: 350-01131
- Savage Model 24, .223/20 gauge shotgun, Serial Number: G162661
- Remington model 742 30-06 rifle, Serial Number: B7210843
- Iver Johnsons 410 shotgun, Serial Number: 70365
- Jimenez Arms model 25 .25 handgun, Serial Number: 055274
- Winchester model 70 XTR Sporter Magnum rifle, Serial Number: G2022252
- Associated Ammunition; and

WHEREAS, the United States caused to be published on the government website [www.forfeiture.gov](http://www.forfeiture.gov) notice of this forfeiture and of the intent of the United States to dispose of the property in accordance with the law and as specified in the Preliminary Order, and further notifying all third parties of their right to petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal interest in the property; and

WHEREAS, notice was served upon Christopher Lee Trask and Vernon Lee Trask; and

WHEREAS, Vernon Lee Trask filed a petition as to the 41 Colt Bisley revolver, serial number: 239320, and the Remington Model 742 30-06 rifle, serial number: B7210843 ; and

WHEREAS, the United States and Vernon Lee Trask have entered into a Settlement Agreement as to the 41 Colt Bisley revolver, serial number: 239320, and the Remington Model 742 30-06 rifle, serial number: B7210843 ; and

WHEREAS, the Court finds that Defendant had an interest in the property that is subject to forfeiture pursuant to 18 U.S.C. § 924(d)(1);

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

- Ruger MKIII Hunter .22 caliber handgun, Serial Number: 270-08448
- Taurus PT140 Millenium .40 caliber handgun, Serial Number: SSL 57207
- Browning 9mm handgun, Serial Number: T301261
- U.S. Carbine M-1 rifle, Serial Number: 2972977
- Ruger Mark II .22 caliber handgun, Serial Number: 215-42572
- Ruger 10/22 .22 caliber rifle, Serial Number: 350-58698
- Winchester Ranger 12 gauge shotgun, Serial Number: L1770663
- Winchester .22 caliber rifle, Serial Number: 390306
- Savage model 24, .22 lr/410 shotgun, Serial Number: None
- Ruger 10/22 .22 caliber rifle, Serial Number: 350-01131
- Savage Model 24, .223/20 gauge shotgun, Serial Number: G162661
- Iver Johnsons 410 shotgun, Serial Number: 70365
- Jimenez Arms model 25 .25 handgun, Serial Number: 055274
- Winchester model 70 XTR Sporter Magnum rifle, Serial Number: G2022252
- Associated Ammunition

is hereby forfeited to the United States of America pursuant to 18 U.S.C. § 924(d)(1).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law.


IT IS FURTHER ORDERED that the United States shall return the 41 Colt Bisley revolver, serial number: 239320, and the Remington Model 742 30-06 rifle, serial number:

B7210843, to Vernon Lee Trask.

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.

SO ORDERED; Dated this 11 day of November, 2011.

BY THE COURT:

  
TENA CAMPBELL, Judge  
United States District Court

DAVID B. BARLOW (#13117)  
United States Attorney  
JEANNETTE F. SWENT (#6043)  
Assistant United States Attorney  
185 South State St., Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

FILED  
U.S. DISTRICT COURT  
2011 NOV 17 P 2:58  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

VIRGINIA CRONAN LOWE  
LONDON YOST  
Trial Attorneys, Tax Division  
U.S. Department of Justice  
P.O. Box 683  
Ben Franklin Station  
Washington, D.C. 20044-0683  
Tel: (202) 307-6484  
(202) 307-2144

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA	)	
	)	Civil No. 2:10 CV 00093 DB
Plaintiff,	)	
	)	
v.	)	<b>UNITED STATES' <del>PROPOSED</del></b>
	)	<b>ORDER CONFIRMING SALE AND</b>
PCS FAMILY TRUST, PAUL SAXTON,	)	<b>DISTRIBUTING PROCEEDS</b>
DAWN CHRISTINE SAXTON AS TRUSTEE	)	
FOR PCS FAMILY TRUST, PAUL SAXTON	)	
AS TRUSTEE FOR PCS FAMILY TRUST	)	
	)	
Defendants.	)	
_____	)	

Before the Court is the United States' Motion for Confirmation of Sale and Disbursement of Proceeds (the United States' Motion). In consideration of the United States' Motion, the Declaration of Mary M. Snoddy submitted therewith, any responses thereto, and the record in this case, the Court finds that the sale of the subject property was conducted in compliance with

the applicable law found at 28 U.S.C. §§ 2001-2002, and that payment was made and accepted in compliance with paragraphs 1.g and 1.h of the Order of Sale (Dkt. # 19). Accordingly, it is hereby

ORDERED that the United States' Motion is GRANTED. It is further

ORDERED that the sale of the subject property is confirmed. It is further

ORDERED that the IRS shall promptly deliver a deed thereto to the purchaser, Cody Allen. It is further

ORDERED that the Clerk is directed to disburse the proceeds of the sale which were deposited with the Court, in the following manner:

A. First, \$3,646.69 to the IRS for costs and fees of sale, by check made payable to the United States Treasury, and sent to Mary M. Snoddy, Property Appraisal and Liquidation Specialist, 500 W 12th Street, Vancouver, Washington 98660, referencing the address of the subject property, 11518 South 1320 East, Sandy, Utah 84092.

B. Second, \$2,914.38 to Salt Lake County, Utah, by check made payable to Salt Lake County Treasury, 2001 South State Street, N1200, Salt Lake City, Utah 84190), referencing the address of the subject property, 11518 South 1320 East, Sandy, Utah 84092.

C. Third, the remainder to the United States to apply to the unpaid federal tax liabilities of Paul Saxton, by check made payable to the United States Treasury, and listing the case number 10-CV-93 and the defendant Paul Saxton's name on the check, and sent to the following address: United States Department of Justice, Tax Division, Financial Litigation Unit, P.O. Box 310, Ben Franklin Station, Washington, DC 20044.



DATED this 17<sup>th</sup> day of November, 2011.

*Dee Benson*

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

ONSET FINANCIAL, INC., a Utah  
corporation, and CW ONSET LLC, a Utah  
limited liability company,

Plaintiff,

vs.

ALLIED HEALTH CARE SERVICES, INC.,  
a New Jersey corporation, and CHARLES K.  
SCHWARTZ, an individual,

Defendant.

ORDER TO ADMINISTRATIVELY  
CLOSED

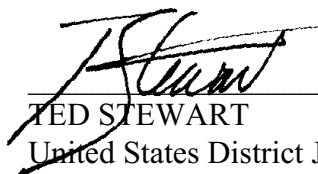
Case No. 2:10-CV-639 TS

Based on the Suggestion of Bankruptcy (Docket No. 11), the Clerk of the Court is  
directed to administratively close this case. This case may be re-opened upon motion by any  
party.

SO ORDERED.

DATED November 17, 2011.

BY THE COURT:

  
TED STEWART  
United States District Judge

DAVID B. BARLOW (#13117)  
United States Attorney  
JEANNETTE F. SWENT (#6043)  
Assistant United States Attorney  
185 South State St., Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

LANDON YOST  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 683  
Ben Franklin Station  
Washington, D.C. 20044-0683  
Tel: (202) 307-2144

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA	)	
	)	Civil No. 2:10-CV-00814-DAK
Plaintiff,	)	
	)	
v.	)	<b>JUDGMENT</b>
	)	
DAVID W. MOORE; TAMRA L. MOORE;	)	
WELLS FARGO BANK, N.A.;	)	
CITIMORTGAGE, INC.; UTAH STATE TAX	)	
COMMISSION	)	
	)	
Defendants.	)	
	)	

---

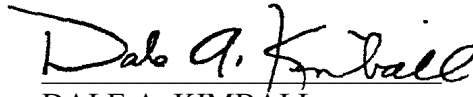
Before the Court is the Joint Stipulation of the United States of America and David W. Moore for entry of judgment against David W. Moore. Based on the motion, and for good cause shown, it is hereby:

ORDERED AND ADJUDGED that judgment is entered in favor of the United States and

against David W. Moore for trust fund recovery penalties arising under 26 U.S.C. § 6672 in the amount of \$86,414.73 for tax periods ending 03/31/2001, 06/30/2001, 09/30/2001, 12/31/2001, 06/30/2002, 09/30/2003, 12/31/2003, 06/30/2004, 09/30/2005, 12/31/2005, 12/31/2006, and 3/31/2007, as of May 31, 2011, plus further accrued penalties and interest accruing after May 31, 2011, pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c), until paid.

IT IS SO ORDERED:

Dated: November 17, 2011

  
DALE A. KIMBALL  
United States District Judge

*Attorneys for Defendants Rymark, Inc. and Nick Markosian*

The Plaintiff, Caliber Automotive Liquidators, Inc., and the Defendants, Rymark, Inc. and Nick Markosian, by and through their respective counsel of record, stipulate that the above-entitled matter, having been fully compromised, adjudged, and settled, may be dismissed with prejudice and upon the merits, with the parties to bear their respective costs and attorney's fees, and move the Court to enter the Order of Dismissal.


MUMFORD WEST & SNOW, LLC

10/31/2011  
Date

  
TYSON B. SNOW  
*Attorneys for Plaintiff*

SMITH & GLAUSER, P.C.

11/3/2011  
Date

  
MICHAEL W. WRIGHT  
*Attorneys for Defendants*

## ORDER

Based upon the Stipulation and Motion of the parties, and good cause appearing;

IT IS ORDERED that the Plaintiff's Complaint be, and the same hereby is, dismissed with prejudice and upon the merits, the parties to bear their own costs and attorneys fees.

DATED this 16th day of November, 2011.

BY THE COURT:



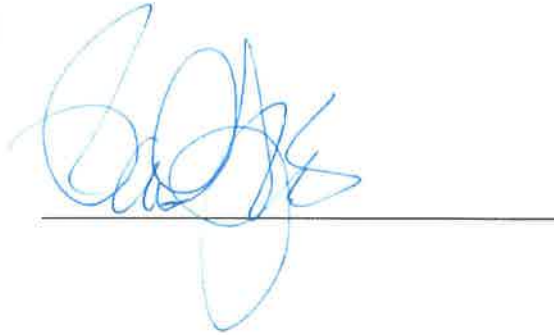
~~HONORABLE DALE A. KIMBALL~~  
~~United States District Court Judge~~

Clark Waddoups  
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid, this 21<sup>st</sup> day of October, 2011, a true and correct copy of the foregoing document to the following:

Tyson B. Snow  
MUMFORD WEST & SNOW  
15 West South Temple, #1000  
Salt Lake City, Utah 84101  
*Attorney for Plaintiff*

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "Tyson B. Snow".



FILED  
U.S. DISTRICT COURT

2011 NOV 17 A 10:35

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

MATTHEW C. BARNECK [5249]  
CHAD E. FUNK [13217]  
RICHARDS BRANDT MILLER NELSON  
*Attorneys for Defendant 1<sup>st</sup> National Title  
Insurance Agency, LLC*  
Wells Fargo Center, 15<sup>th</sup> Floor  
299 South Main Street  
P.O. Box 2465  
Salt Lake City, Utah 84110-2465  
Email: Matthew-Barneck@rbmn.com  
Chad-Funk@rbmn.com  
Telephone: (801) 531-2000  
Fax No.: (801) 532-5506

---

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH**

---

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
AMTRUST BANK,

Plaintiff,

vs.

1<sup>ST</sup> NATIONAL TITLE INSURANCE  
AGENCY, LLC, a Utah limited liability  
company, and WESTCOR LAND TITLE  
INSURANCE COMPANY, a California  
corporation,

Defendant.

**ORDER DENYING  
MOTION TO QUASH**

Case No. 2:10CV01084  
Judge Bruce S. Jenkins

---

This matter came before the Court as previously scheduled on Monday,  
November 14, 2011 at 11:30 a.m., before the Honorable Bruce S. Jenkins of the United States  
District Court for the District of Utah, on the Motion to Quash Subpoena and/or for Protective

Order filed by Fidelis Capital Group, LLC. David K. Heinhold appeared on behalf of Plaintiff Federal Deposit Insurance Corporation, Matthew C. Barneck appeared on behalf of Defendant 1<sup>st</sup> National Title Insurance Agency, LLC (“1<sup>st</sup> National”), Bryce D. Panzer appeared on behalf of Defendant Westcor Land Title Insurance Company, and John J. Brannelly, Jr. appeared on behalf of Fidelis Capital Group, LLC (“Fidelis”). The Court received and reviewed the Motion and all supporting and opposing Memoranda, and also heard argument from counsel.

Based thereon, the Court denies the Motion to Quash. The Court finds that the Subpoena was served on JP Morgan Chase National Corporate Services, Inc. on June 28, 2011, and at that time Fidelis was not a party to this action. However, based upon the Court’s Order Granting Leave to Amend entered October 12, 2011, 1<sup>st</sup> National filed a Third-Party Complaint on the same day which names Fidelis as a Third-Party Defendant along with its principals Brian Zimmerman, Paul Hill, Russell Black, and Rick Wells. The allegations of the Third-Party Complaint are much broader than those of the First Amended Complaint with respect to relevance and discoverability of the documents sought by the Subpoena.

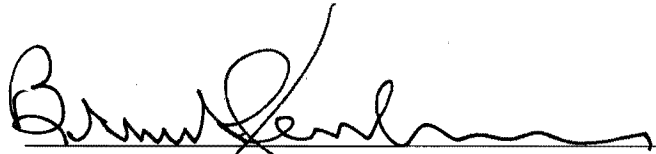
Additionally, the Court notes that a Stipulated Protective Order was entered August 12, 2011 which satisfies the confidentiality concerns raised in the Motion to Quash.

For those reasons, the Court denies the Motion to Quash and rules that the Subpoena Respondent JP Morgan Chase National Corporate Services, Inc. is now required to respond to the Subpoena.

IT IS SO ORDERED.

DATED this <sup>16<sup>th</sup></sup>16 day of November, 2011.

BY THE COURT

  
HONORABLE BRUCE S. JENKINS  
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM:

VANGUARD LEGAL, PLLC

/s/ John J. Brannelly, Jr.  
JOHN J. BRANNELLY, JR.  
*Attorneys for Fidelis Capital Group, LLC*  
*(signed by Filing Attorney with permission of Plaintiff's Attorney)*

PARSONS BEHLE & LATIMER

/S/ David K. Heinhold  
DAVID K. HEINHOLD,  
*Attorneys for Federal Deposit Insurance Corporation*  
*(signed by Filing Attorney with permission of Plaintiff's Attorney)*

BLACKBURN & STOLL, LC

/S/ Bryce D. Panzer  
BRYCE D. PANZER  
*Attorneys for Westcor Land Title Insurance Company*  
*(signed by Filing Attorney with permission of Defendant*  
*Westcor Land Title Insurance Company's Attorney)*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 15, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Gary E. Doctorman  
David K. Heinhold  
PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
*Attorneys for Plaintiff*

Bryce D. Panzer  
Brett N. Anderson  
BLACKBURN & STOLL, LC  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111  
*Attorneys for Defendant Westcor Land Title Insurance Company*

John J. Brannelly, Jr.  
VANGUARD LEGAL, PLLC  
59 West 9000 South  
Sandy, UT 84070  
*Attorneys for Fidelis Capital Group, LLC*

/s/ Matthew C. Barneck

G:\EDS\DOCS\18642\0002\U99615.DOC

FILED  
U.S. DISTRICT COURT

2011 NOV 15 P 1:43

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

WOOD JENKINS LLC  
Darryl J. Lee #4955  
Jared M. Asbury #12435  
500 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 366-6060  
[djlee@woodjenkinslaw.com](mailto:djlee@woodjenkinslaw.com)  
[jmasbury@woodjenkinslaw.com](mailto:jmasbury@woodjenkinslaw.com)

*Attorneys for Defendant the Federal Deposit  
Insurance Corporation*

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FIRST NATIONAL BANK OF WYNNE, an )  
Arkansas corporation, )

Plaintiff, )

v. )

TWIN CREEKS SPECIAL SERVICE )  
DISTRICT, a Utah special service district; )  
FEDERAL DEPOSIT INSURANCE )  
CORPORATION, an independent agency of )  
the United States, as Receiver for )  
ARKANSAS NATIONAL BANK, NA; WS )  
SLEEPING INDIAN RANCH, LLC, a Utah )  
limited liability company; BOSTON )  
EQUITY RE, LLC a Delaware limited )  
liability company; ISLAND PEAK RANCH, )  
LLC, a Utah limited liability company; )  
UTAH WATER COMPANY, LLC, a Utah )  
limited liability company; ASPEN RIDGE )  
RANCHES, LLC, A Utah limited liability )  
company; RAYMOND WELLER, an )  
individual; DOUGLAS ANDERSON, an )  
individual; JEFFREY J. SCOTT, an )  
individual; ROBERT KENT MADSEN, an )  
individual; )

and )

**STIPULATED PROTECTIVE  
ORDER**

Civil No. 2:10-CV-01100-DB

Judge Dee Benson

ALL OTHER PERSONS OR ENTITIES )  
CLAIMING OR THAT MAY CLAIM AN )  
INTEREST IN Water Right No. 55-12315, )  
representing 97 acre feet of water segregated )  
from Water Right No. 55-9269, and 28.82 )  
acre feet from Municipal and Industrial )  
(M&I) water credit in Twin Creeks Special )  
Service District; )  
and )  
ALL OTHER PERSONS OR ENTITIES )  
CLAIMING OR THAT MAY CLAIM AN )  
INTEREST IN THE FOLLOWING )  
SHARES OF LAKE CREEK IRRIGATION )  
COMPANY: Cert. # 963 for 13.833 primary )  
shares; Cert. # 530, for 21 first class shares; )  
Cert. # 532, for 38 second class shares; Cert. )  
# 533, for 3.5 third class shares; )  
and )  
ALL OTHER PERSONS OR ENTITIES )  
CLAIMING OR THAT MAY CLAIM AN )  
INTEREST IN THE FOLLOWING )  
SHARES OF WASATCH IRRIGATION )  
COMPANY: Cert. # 4517, for .80 shares and )  
Cert # 4912 for .34 shares, )  
Defendants. )

---

Plaintiff First National Bank of Wynne (FNB") and Defendant the Federal Deposit Insurance Corporation, as Receiver for ANB ("FDIC"), have jointly moved for and stipulated to the entry by the Court of a Protective Order as set forth below, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

Based on such stipulation and joint motion of FNB and the FDIC (individually a “Party” and collectively the “Parties”), and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. Any document, or portion thereof, and any other form of evidence or discovery contemplated under Rules 26 through 36 of the Federal Rules of Civil Procedure which, in the good faith opinion of a Party contains information which is usually kept confidential by the Party and which could divulge internal government decision-making processes if publically disclosed (“Confidential Information”), may be designated by the Parties as “*CONFIDENTIAL*” in accordance with the provisions of this Protective Order.

2. As used herein “*CONFIDENTIAL*” documents, things, and information shall consist of all documents, things and information properly marked as “*CONFIDENTIAL*” under this Protective Order that a Party in good faith believes contains information or communications which are (a) subject to (i) the attorney-client privilege, and/or (ii) the attorney work product doctrine, and/or (b) would be of potential strategic or tactical advantage if known by other entities negotiating with the federal government concerning financial work out issues, and/or (c) would be of potential strategic or tactical advantage if known by competitors or other financial institutions interacting with either FNB or the FDIC. “*CONFIDENTIAL*” information shall be clearly marked, noticed or designated “*CONFIDENTIAL*”.

3. Confidential information must be designated as follows:

a. Documents or copies provided to another Party in response to discovery requests or pursuant to Fed. R. Civ. P. 26(a) containing Confidential Information may be



designated by any Party as "*CONFIDENTIAL*" by marking the page or pages on which the Confidential Information appears with legend "*CONFIDENTIAL*".

Electronic documents containing Confidential Information may be designated by any Party as "*CONFIDENTIAL*" by marking the container, disc or other physical medium which includes such document(s) with the legend "*CONFIDENTIAL*".

- b. In lieu of marking the original of a document which contains Confidential Information prior to inspection, a Party may orally designate documents being produced for inspection as "*CONFIDENTIAL*" thereby making them subject to this Order.
- c. Confidential Information disclosed at a deposition, whether by testimony or use of a document or thing, may be designated as "*CONFIDENTIAL*" by clearly indicating on the record at the deposition the specific testimony containing Confidential Information that is to be made subject to the provisions of this Order. Documents, things, or information not designated on the record of the deposition as "*CONFIDENTIAL*" may thereafter be designated as such by notifying the other party in writing within fourteen (14) days of the receipt of the transcript of such deposition. During that fourteen (14) day period, the deposition transcript, and any documents, things, and information shall be treated as "*CONFIDENTIAL*". If a designation is made, each Party shall attach a copy of any such written notification to the face of the deposition transcript and each copy thereof in its possession, custody or control.



- d. Confidential Information contained in Rule 26(a) disclosures, responses to interrogatories, other discovery requests or responses, affidavits, briefs, memoranda or other papers filed with the Court, may be designated by prominently marking the cover page of such documents containing Confidential Information with the legend "*CONFIDENTIAL*". Copies of such items filed with the Court shall be maintained under seal pursuant to the provisions of Paragraph 7 hereof.
  - e. Tangible objects constituting or containing Confidential Information may be designated by affixing to the object or its container a label or tag marked "*CONFIDENTIAL*".
  - f. Should any persons or entity with access to documents, things or information designated as "*CONFIDENTIAL*" make copies, extract, summaries, descriptions, projections and/or extrapolations of or from the documents, things or information designated as "*CONFIDENTIAL*" or any portions thereof, such copies, extracts, summaries, descriptions, projections and/or extrapolations shall be stamped "*CONFIDENTIAL*" consistent with the original information and treated as Confidential Information pursuant to the provisions of this Stipulated Protective Order.
4. Confidential Information designated "*CONFIDENTIAL*" shall only be disclosed to and made available to the following:
- a. Officers, directors, partners and employees of the Parties herein;

- b. “Outside Trial Counsel” of record and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation; court reporters and videographers receiving or transcribing the documents, things or information in connection with official reporting (for example, at a deposition or a hearing); the Court; outside photocopy, imaging, database, graphics, design, computer simulation modeling, or exhibit production services, to the extent necessary to assist such Outside Trial Counsel for purposes of this litigation.
- c. Experts and consultants retained or employed by a Party’s attorney solely for the purpose of discovery in this litigation or assisting in the preparation of this litigation for trial and who are not currently employed by any of the Parties or their competitors. Provided, however, that such retained or employed experts and consultants agree not to use the Confidential Information for any purpose other than discovery in this litigation or assisting in the preparation of this matter for trial and/or mediation.
- d. Any person described in Subsections (a) and (c) above shall sign an acknowledgment in the form of Exhibit “A” attached hereto prior to the disclosure of any Confidential Information disclosed by the other side. Any individual identified pursuant to this paragraph who has executed Exhibit “A” shall be treated as subject to this Stipulated Protective Order. A willful violation of any material term of this Stipulation Protective Order by any such individual may be punishable as contempt of court.

5. If the Party to whom "*CONFIDENTIAL*" documents, things or information has been produced believes that any of the documents, things or information has been improperly designated, the receiving Party may at any time request the Party which made the designation to cancel the designation with respect to any documents, things or information and to agree that thereafter such document, thing or information will no longer be subject to certain or all of the provisions of this Stipulated Protective Order. Such request shall be in writing and shall particularly identify the information that is contested, including the reasons supporting the contentions. If the Party which produced the documents things, or information objects to the requested declassification, it must, within two weeks of its receipt of the request to declassify or such other time as the Parties may mutually agree, file and serve a motion for a protective order supporting its classification. The Party claiming the designation of protection shall have the burden of establishing the status of the particular document, thing or information. If no such motion is timely filed, the Party objecting to the designation shall be entitled to treat the documents and/or information in accordance with the written request of such Party.

6. No copies of documents, things or information designated as "*CONFIDENTIAL*" shall be received, kept, or maintained by persons other than those authorized to do so under this Protective Order.

7. To the extent it is necessary to file with the Court any material containing or referring to any "*CONFIDENTIAL*" document(s), thing(s) or information, the Parties shall comply with Rule 5-2 of the Local Rules for the United States Federal District Court for the District of Utah.



8. Each Party's production of any document(s), thing(s), or information designated as "*CONFIDENTIAL*" shall be solely for purposes of and use in this action, and those documents, things and information shall not be used for any other purpose or in any other action. If any such document(s), thing(s) or information properly becomes a matter of public record without an order of Court causing the same to be retained under seal or retained in an otherwise confidential manner, then the Parties will have the same rights to utilize the documents, things, or information as the public at large under the First Amendment.

9. Within one hundred twenty (120) days after conclusion of this action and any appeal taken here from, all documents, things, and other materials produced or designated as containing Confidential Information, and all reproductions thereof, shall be returned to the Party who produced them except that counsel for each party may retain one entire set of pleadings and depositions (including exhibits) in this case. Any Party may, at their option, destroy annotated copies or summaries of Confidential Information in lieu of returning those copies and summaries to the producing Party.

10. If another court of an administrative agency subpoenas or order production of stamped confidential documents that a party has obtained under the terms of this order, such party shall promptly notify the party or other person who designated the document as *CONFIDENTIAL* of the pendency of such subpoena or order in sufficient time to allow for the other Party to seek a protective order.

11. Persons obtaining access to stamped confidential documents under this order shall use the information only for preparation and trial of this litigation (including appeals and

retrials), and shall not use such information for any other purpose, including business, governmental, commercial, administrative, or judicial proceedings.

12. The attorneys of record are responsible for employing reasonable measures, consistent with this order, to control duplication of, access to, and distribution of "CONFIDENTIAL" documents.

13. The inadvertent, unintentional, or *in camera* disclosure of confidential documents and information shall not, under any circumstance, be deemed a waiver, in whole or in part, of any Party's claims of confidentiality.

14. Notwithstanding the termination of this action, persons who have had access to "CONFIDENTIAL" documents, things or information shall remain subject to the terms of this Stipulated Protective Order.

15. This Stipulated Protective Order may be modified by written agreement of the parties or by further order of the Court. Each Party shall also have the right to petition the Court to modify this Stipulated Protective Order or for additional protection under Fed. R. Civ. P. 26(c).

ENTERED this 14 day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dee Benson", written over a horizontal line.

Honorable Dee Benson  
United States District Court Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

ETAGZ, INC.

Plaintiff,

v.

CHERI MAGAZINE, ET AL.

Defendants.

---

ORDER FOR PRO HAC VICE ADMISSION

Case No. 2:10-cv-1266-DAK

Judge Dale A. Kimball

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Peter J. Chassman in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 15<sup>th</sup> day of November, 2011.



Judge Dale A. Kimball  
U.S. District Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

ETAGZ, INC.

Plaintiff,

v.

CHERI MAGAZINE, ET AL.

Defendants.

---

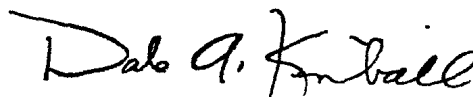
ORDER FOR PRO HAC VICE ADMISSION

Case No. 2:10-cv-1266-DAK

Judge Dale A. Kimball

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Phillip D. Price in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 15<sup>th</sup> day of November, 2011.

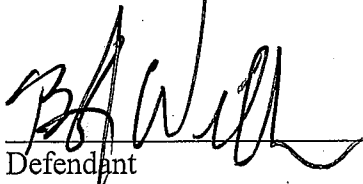


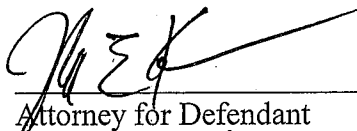
Judge Dale A. Kimball  
U.S. District Judge

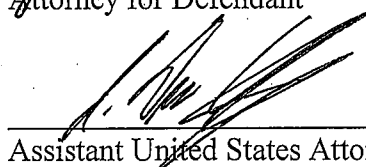
The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.



DATED this 18 day of November, 2011.

  
\_\_\_\_\_  
Defendant

  
\_\_\_\_\_  
Attorney for Defendant

  
\_\_\_\_\_  
Assistant United States Attorney

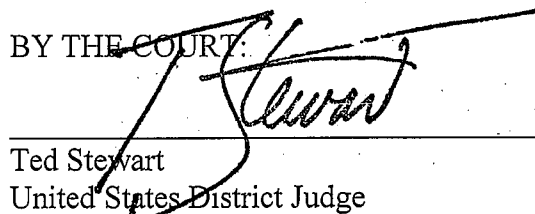
#### ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

**IT IS HEREBY ORDERED** that United States Magistrate Judge David Nuffer shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 15 day of November, 2011

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2011 NOV 14 P 3:04

DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,	:	BY: _____ DEPUTY CLERK
	:	Case No. 2:11-CR-00436 DAK
Plaintiff,	:	
	:	FOURTH FINDINGS AND ORDER
v.	:	EXCLUDING TIME UNDER THE
	:	SPEEDY TRIAL ACT
BRIAN GOFF, et al.	:	
	:	
Defendants.	:	United States Magistrate Judge Samuel Alba

---

Defendant Golden Jansen Meier appeared with counsel, and defendants Brian Goff and Kevin Michael Prowell appeared through their counsel for a status conference before United States Magistrate Judge Samuel Alba on October 26, 2011. The government was represented by the United States Attorney's Office.

Matters of discovery were again discussed and counsel for the defendants requested additional time to review discovery and to file motions. The Court was informed by the government as to the status of discovery, and that the government has provided a substantial amount of discovery and continues to provide discovery to the defendants in this case. The Court, being aware that discovery is extensive in this case, deemed it appropriate to allow the defendants to review the discovery for the immediate and related investigations related to additional matters related to the potential credibility of witnesses in the case regarding

transactions described in the indictment, and also other transactions that may contain impeachment, *Jencks* and *Giglio* evidence. The Court recalls that the government had earlier supplied to the defendants discovery encompassing approximately 16 bankers boxes of documents and reports related to the tangential investigations that may bear on this case because of the involvement in those investigations of persons that may be witnesses in the instant case. The Court noted that with this volume of discovery, the preparation involved, and the fact that there are multiple defendants, it would be appropriate to set a motions deadline of November 18, 2011, and thereafter set a status and scheduling hearing on November 23, 2011, in order for the defendants to report to the Court on the motions filed, and to set a briefing and hearing schedule for those motions.

#### FINDINGS AND ORDER

Based upon the information presented to the Court about the nature of the case, and representations of the defendants that there is extensive discovery and that the defendants request and require additional time to become familiar with and prepare for the case, and to file motions, and being familiar with file herein, the Court makes the following Findings:

1. This case is deemed to be complex based upon the nature of the prosecution and with a substantial amount of discovery to be delivered and reviewed by counsel for the defendants.
2. Time necessary for review of the discovery and preparation and filing of motions and preparation for trial is substantial. Taking into account the exercise of due diligence by the parties, it is unreasonable to expect this process to be completed in an adequate way within the time anticipated by the Speedy Trial Act, Title 18 U.S.C. Sections 3161, et seq., see especially

Section 3161(h)(7)(A) and (B)(ii).

3. The Court further stated that in view of the complexity of the matter, the ends of justice would be best served by setting a motions deadline of November 18, 2011, and a status conference date of November 23, 2011 for defense counsel to refine their view of the discovery and evidence in this matter, and to file appropriate defensive motions. Counsel should be prepared at that time to report on the motions filed, and for a setting of a firm trial date and related deadlines. The ends of justice so served outweigh the best interest of the defendants, the public or the United States in a speedy trial. All time from the date of the initial appearance up through and including the date of the proposed status hearing is excludable from any calculation required by the Speedy Trial Act.

4. The Court also finds, in accordance with the provisions of 18 U.S.C. §§ 3161 (h) (7) (A) and 3161(h)(8)(B)(iv), that the ends of justice, the public interest, and the defendants' interests are served by these delays, continuing the trial date to provide proper time to prepare for trial, outweigh the best interest of the public and the defendant in a speedy trial.

Based upon the foregoing Findings, it is hereby ORDERED:

1. A deadline for the filing of defendants' motions is set for November 18, 2011.
2. A status conference in this matter is set for November 23, 2011, at 9:00 AM. Counsel shall report on discovery, motions filed, a briefing and hearing schedule, and the hearing will focus on setting a trial date.
3. All time from May 27, 2011 (initial appearance) up through and including November 23, 2011 (or whatever date the status conference and trial setting actually occurs), is excludable

and is hereby excluded from any calculation required by the Speedy Trial Act, Title 18 U.S.C. §  
3161 (h) (1) (D), 3161 (h)(7)(A), et seq.

DATED this 14<sup>th</sup> day of November, 2011.

BY THE COURT:

  
SAMUEL ALBA  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

2011 NOV 9 PM 4:12  
IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION

BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES OF AMERICA,

Case No. 2:11CR 471

Plaintiff,

ORDER CONTINUING  
SENTENCING

vs.

Hon. Dee Benson

ROBERT LEON MESSERMSITH,

Defendants.

IT IS FURTHER ORDERED: based upon the motion filed in this matter,  
sentencing in this matter is reset for 2/3/2012, 2012.

DATED this 11<sup>TH</sup> day of November, 2011.

BY THE COURT:



HON. DEE BENSON  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

IRVIN FRANKLIN HYDE

Defendant(s).

---

)  
)  
) Case No. 2:11-CR-619 TS  
)  
)

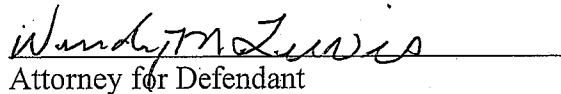
**CONSENT TO ENTRY OF PLEA  
OF GUILTY BEFORE THE  
MAGISTRATE JUDGE AND  
ORDER OF REFERENCE**  
)  
)

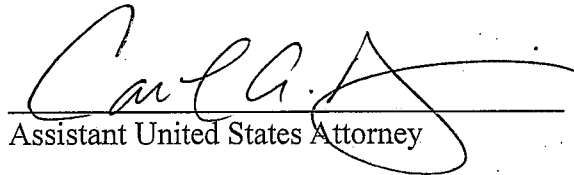
Pursuant to 28 U.S.C. § 636(b)(3), the defendant, IRVIN FRANKLIN HYDE, after consultation and agreement with counsel, consents to United States Magistrate Judge David Nuffer accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 17<sup>th</sup> day of November, 2011.

  
Defendant

  
Attorney for Defendant

  
Assistant United States Attorney

**ORDER OF REFERENCE**

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

**IT IS HEREBY ORDERED** that United States Magistrate Judge David Nuffer shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 3<sup>rd</sup> day of November, 2011

BY THE COURT:

  
Ted Stewart  
United States District Judge



FILED  
U.S. DISTRICT COURT

---

UNITED STATES OF AMERICA,	2011 NOV 16 P 2:42	:
		:
	DISTRICT OF UTAH	:
PLAINTIFF,		:
	BY: _____	:
	DEPUTY CLERK	:
		:
VS.		:
		:
EMILIO SOTO-TULA,		:
		:
DEFENDANT.		:

---

CASE NO. 2:11-CR-646 TC

Based on the Motion to Continue the Jury Trial filed by defendant Emilio Soto-Tula in the above-entitled case, and good cause appearing, the court makes the following findings:

1. The parties are engaged in plea negotiations that may obviate the need for a trial in this matter. The parties need additional time to review recently provided discovery in the case to determine if and how they may impact the negotiations in this case and how it may impact the defendant's decision to plead.
2. Defendant is in custody and agrees with the need for a continuance of the trial.
3. Assistant United States Attorney Robert Lund is aware of this motion and does not object to the continuance.
4. The ends of justice are best served by a continuance of the trial date, and the ends of justice outweigh the interest of the public and the Defendant to in speedy trial.

Based on the foregoing findings, it is hereby ORDERED,

The Jury Trial previously scheduled to begin on October 18, 2011, is hereby continued to the 23 day of January, 2012 at 830Am.

Pursuant to 18 U.S.C. § 3161(h), the Court finds that the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation for good cause.

Dated this 9<sup>th</sup> day of November, 2011.

BY THE COURT:

Tena Campbell

TENA CAMPBELL  
United States District Court Judge

JAMES C. BRADSHAW (#3768)  
Attorney for Defendant  
BROWN, BRADSHAW & MOFFAT, L.L.P.  
10 West Broadway, Suite 210  
Salt Lake City, Utah 84101  
Telephone: (801) 532-5297  
Facsimile: (801) 532-5298

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

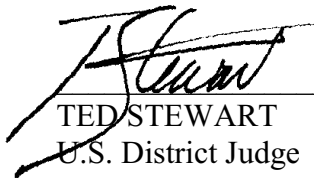
UNITED STATES OF AMERICA,  Plaintiff,  v.  RAUL RAMIREZ-AGUILAR,  Defendant.	ORDER AUTHORIZING PAYMENT OF ASSOCIATE ATTORNEY  Case No. 2:11-CR-0647-TS
--	--

Based upon the motion of the defendant, Raul Ramirez-Aguilar, and for good cause appearing,

IT IS HEREBY ORDERED that Ms. Danielle Hawkes (#13233) shall serve as associate counsel to James C. Bradshaw in representing Mr. Ramirez-Aguilar and all costs associated therewith shall be paid under the terms of the Criminal Justice Act

DATED this 17th day of November 2011.

BY THE COURT:

  
TED STEWART  
U.S. District Judge

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH**

---

UNITED STATES OF AMERICA,

Plaintiff,

vs

ALFREDO LOZANO-BENITEZ,

Defendant.

**EX-PARTE ORDER FOR  
INTERIM PAYMENTS FOR DEFENSE  
COUNSEL**

CASE NUMBER 2:11-CR-647-26

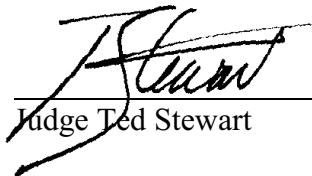
Judge Ted Stewart

---

Based upon a Motion by the Defendant and good cause appearing, this Court hereby authorizes interim payments for the defense counsel, Aric Cramer, in this matter.

DATED this 17th day of November, 2011.

**BY THE COURT:**

  
\_\_\_\_\_  
Judge Ted Stewart

UNITED STATES DISTRICT COURT  
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

2011 NOV 17 A 9:05

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Jose Luis Jimenez-Gonzalez

aka Jose Luis Jimenez

aka Juan Jose Florez

BY:

Case Number:

DUTX 2:11CR00787-001 TC

DEPUTY CLERK

USM Number:

18486-081

Michael Langford

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Felony Information

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section

8 USC § 1326

Nature of Offense

Reentry of a Previously Removed Alien

Offense Ended

Count

1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/08/2011

Date of Imposition of Judgment

*Tena Campbell*

Signature of Judge

Tena Campbell

United States District Court

Name and Title of Judge

11-16-2011

Date

DEFENDANT: Jose Luis Jimenez-Gonzalez  
CASE NUMBER: DUTX 2:11CR00787-001 TC

## PROBATION

The defendant is hereby sentenced to probation for a term of :

36 Months

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Luis Jimenez-Gonzalez  
CASE NUMBER: DUTX 2:11CR00787-001 TC

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally re-enter the United States.

DEFENDANT: Jose Luis Jimenez-Gonzalez  
CASE NUMBER: DUTX 2:11CR00787-001 TC

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00 is remitted	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

<b>TOTALS</b>	\$ _____ 0	\$ _____ 0
---------------	------------	------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.



DEFENDANT: Jose Luis Jimenez-Gonzalez  
CASE NUMBER: DUTX 2:11CR00787-001 TC

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
- ☐ not later than \_\_\_\_\_, or
- ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- The Court orders that the special assessment fee required by 18 USC § 3013 is remitted, pursuant to 18 USC § 3573**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

# UNITED STATES DISTRICT COURT

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

CENTRAL

DISTRICT OF

UTAH

UNITED STATES OF AMERICA

v.

DEREK W. PIPPIN

## ORDER OF PROBATION UNDER 18 U.S.C. § 3607

D. MARK JONES, CLERK

DEPUTY CLERK

CASE NUMBER: 2:11 CR 797-RTB

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

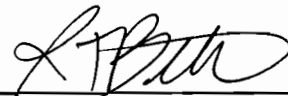
**IT IS ORDERED** that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

### The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation office, and, if directed by probation, shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

Date:

11-15-11



Signature of Judicial Officer

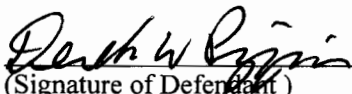
Robert T. Braithwaite, U.S. Magistrate

Name and Title of Judicial Officer

## CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.



(Signature of Defendant)

2240 Castle Gate Dr. N. Apt 325

(Street Address)

Castle Rock CO 80108

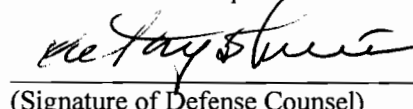
(City, State, Zip)

720-318-3871

(Telephone Number of Defendant)

MAY 09 1967

(Birthdate of Defendant)



(Signature of Defense Counsel)

11-15-11

(Date of Signing)

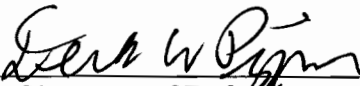
## CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

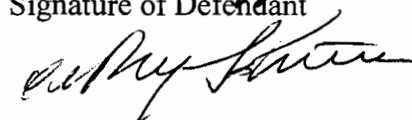
DATED: \_\_\_\_\_

by

  
Signature of Defendant

DATED: 11-15-11

by:

  
Signature of Defense Counsel  
(If any)

JAMES C. BRADSHAW (#3768)  
Attorney for Defendant  
BROWN, BRADSHAW & MOFFAT, L.L.P.  
10 West Broadway, Suite 210  
Salt Lake City, Utah 84101  
Telephone: (801) 532-5297  
Facsimile: (801) 532-5298

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  v.  ARTURO AMEZCUEA,  Defendant.	ORDER AUTHORIZING ASSOCIATE ATTORNEY   Case No. 2:11-CR-00811DAK
---	--

Based upon the motion of the defendant, Arturo Amezcua, and for good cause appearing,


IT IS HEREBY ORDERED that:

1. Ms. Danielle Hawkes (#13233) shall serve as a an associate attorney to James C. Bradshaw in representing Mr. Amezcua.
2. Ms. Danielle Hawkes shall be admitted to the Davis County Jail to visit Mr. Amezcua in facilitation of his legal representation.

3. All costs associated with this representation shall be paid under the Criminal Justice Act.

DATED this 17th day of November 2011.

BY THE COURT

A handwritten signature in cursive script, reading "Paul M. Warner", positioned above a horizontal line.

PAUL M. WARNER  
U.S. Magistrate Judge

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	ORDER TO CONTINUE TRIAL
	:	
vs.	:	
	:	
	:	Case No. 2:11CR 876 DAK
PORTIA LOUDER,	:	
CHAD LOUDER	:	David Nuffer
	:	
Defendant.	:	
	:	

---

The parties appeared before the Court on **November 10, 2011**. Ms. Louder is represented by John Markham, and Mr. Louder is represented by Spencer Rice. The United States is represented by Stewart Walz and Karin Fojtik.

IT IS FURTHER ORDERED: based on the November 10, 2011 hearing, the time between **November 10, 2011** and the trial date of **March 12-23, 2012**, is excluded from the calculation under the Speedy Trial Act in order to grant defense counsel and the government sufficient time to prepare, and based on the reasons articulated at the hearing.

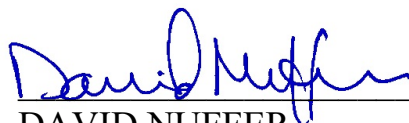
The Court finds that such a continuance is required for effective preparation for trial taking into account the exercise of due diligence and the need for additional time to prepare this matter for trial. Notably, the government indicated that this matter involved over twenty boxes of discovery. *See* 18 U.S.C. § 3161(7)(B)(ii). The Court also notes that Ms. Louder has out-of-state counsel, and that Mr. Louder is working outside the state of Utah. The Court finds that to proceed to trial within 70 days would cause harm to the defendants' cases that outweighs any public interest in a speedy trial pursuant to 18 U.S.C. § 3161(h)(7)(A).

The Court specifically finds that the two-month extension beyond the suggested trial date should afford the parties sufficient time to prepare this matter. The Court further notes that neither defendant is in custody at this time.

Accordingly, based on these factors, and the reasons articulated at the hearing on November 10, 2011, the ends of justice are served by extending the trial date in this matter to **March 12, 2012**.

DATED this \_\_15th\_\_ day of \_\_November\_\_, 2011.

BY THE COURT:

  
\_\_\_\_\_  
DAVID NUFFER  
U.S. MAGISTRATE JUDGE

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

UNITED STATES OF AMERICA  
Plaintiff(s),

vs.

MANUEL NUNEZ  
Defendant(s),

11/14/2011  
BY D. MARK JONES, CLERK  
DEPUTY CLERK

PRETRIAL ORDER PURSUANT  
TO RULE 17.1 F.R.Cr.P.

Case No. 2:11-cr-00952-TS

The above-entitled action came on for pretrial conference November 14, 2011, before Robert T. Braithwaite, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for January 23, 2012, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by January 18, 2012 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No       

3. Pretrial motions are to be filed by: January 3, 2012 at



5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by January 9, 2012. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: In custody.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No    Language Spanish

DATED this 14<sup>th</sup> day of November, 2011.

BY THE COURT:



Robert T. Braithwaite  
Magistrate Judge

Paul Veasy  
**PARSON BEHLE AND LATIMER**  
201 S. Main Street, Suite 1800  
Salt Lake City, Utah 84111-2218  
(801) 532-1234 Telephone  
(801) 536-6111 Facsimile

Jeffrey M. Tillotson, P.C., *pro hac vice*  
John Volney, *pro hac vice*  
J. Michael Thomas, *pro hac vice*  
**LYNN TILLOTSON PINKER & COX, LLP**  
2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201  
(214) 981-3800 Telephone  
(214) 981-3839 Facsimile

*Attorneys for Plaintiffs Patrick J. Mulligan and  
The Law Office of Patrick J. Mulligan, P.C.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

PATRICK J. MULLIGAN, an Individual,  
and THE LAW OFFICE OF PATRICK J.  
MULLIGAN, P.C., a Professional  
Corporation,

Plaintiffs,

v.

CHARLES F. ABBOTT, an individual, and  
CHARLES F. ABBOTT, P.C., a  
Professional Corporation,

Defendants.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR EXTENSION OF TIME  
TO FILE A REPLY BRIEF IN  
SUPPORT OF ITS MOTION FOR  
SUMMARY JUDGMENT**

Case No. 2:11cv00045-DB

Honorable Dee Benson

The Court, having fully considered the unopposed motion of Plaintiffs Patrick J. Mulligan and The Law Office of Patrick J. Mulligan, P.C. for an extension of time to file a reply

FILED  
U.S. DISTRICT COURT

2011 NOV 15 P 1:42

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

in support of its motion for partial summary judgment, finding good cause appearing, hereby **GRANTS** Plaintiffs' motion. The Court, hereby **ORDERS** that Plaintiffs shall file their reply in support of their motion for partial summary judgment on or before **November 21, 2011**.

**DONE** this the 14 day of NOV, 2011.

**BY THE COURT:**

A handwritten signature in black ink, reading "Dee Benson", written over a horizontal line.

Honorable Dee V. Benson  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

DAVID KARL GOWERS,  
  
Plaintiff,  
  
v.  
  
OFFICER ESTEY et al.,  
  
Defendants.

MEMORANDUM DECISION &  
ORDER DIRECTING SERVICE OF  
PROCESS, ANSWER AND/OR  
DISPOSITIVE MOTION

Case No. 2:11-CV-111 CW

District Judge Clark Waddoups

Plaintiff, David Karl Gowers, an inmate at Central Utah Correctional Facility, filed this *pro se* civil rights suit. See 42 U.S.C.S. § 1983 (2011). Plaintiff was allowed to proceed *in forma pauperis*. See 28 *id.* § 1915.

Based on review of the Complaint, the Court concludes that official service of process is warranted. The United States Marshals Service is directed to serve a properly issued summons and a copy of Plaintiff's Complaint, along with this Order, upon the following Utah Department of Corrections employees:

Officer F. Estey  
Officer T. Haleen  
Captain Devon Blood  
Caseworker Heidi Johnson  
Captain Don Taylor  
Lt. Christiansen  
Lt. R. Painter  
Captain Mel Coulter  
Captain Michael Allen

**Doyle Cutler**  
**Craig Balls**  
**Deputy Warden John Irons**

Once served, Defendants shall respond to the summons in one of the following ways:

(A) If Defendants wish to assert the affirmative defense of Plaintiff's failure to exhaust administrative remedies in a grievance process, Defendants must,

- (i) file an answer, within twenty days of service;
- (ii) within ninety days of filing an answer, prepare and file a *Martinez* report limited to the exhaustion issue<sup>1</sup>;

---

<sup>1</sup> See [\*Martinez v. Aaron\*, 570 F.2d 317 \(10th Cir. 1978\)](#) (approving district court's practice of ordering prison administration to prepare report to be included in pleadings in cases when prisoner has filed suit alleging constitutional violation against institution officials).

In [\*Gee v. Estes\*, 829 F.2d 1005 \(10th Cir. 1987\)](#), the Tenth Circuit explained the nature and function of a *Martinez* report, saying:

Under the *Martinez* procedure, the district judge or a United States magistrate [judge] to whom the matter has been referred will direct prison officials to respond in writing to the various allegations, supporting their response by affidavits and copies of internal disciplinary rules and reports. The purpose of the *Martinez* report is to ascertain whether there is a factual as well as a legal basis for the prisoner's claims. This, of course, will allow the court to dig beneath the conclusional allegations. These reports have proved useful to determine whether the case is so devoid of merit as to warrant dismissal without trial.

*Id.* at 1007.

(iii) within ninety days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within ninety days of filing an answer, submit a proposed order for dismissing the case based upon Plaintiff's failure to exhaust, in word processing format, to:

[utdecf\\_prisonerlitigationunit@utd.uscourts.gov](mailto:utdecf_prisonerlitigationunit@utd.uscourts.gov).

(B) If Defendants choose to challenge the bare allegations of the complaint, Defendants shall, within twenty days of service,

(i) file an answer; or

(ii) file a motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6), and submit a proposed order for dismissing the case, in word processing format, to:  
[utdecf\\_prisonerlitigationunit@utd.uscourts.gov](mailto:utdecf_prisonerlitigationunit@utd.uscourts.gov).

(C) If Defendants choose not to rely on the defense of failure to exhaust and wish to pierce the allegations of the complaint, Defendants must,

(i) file an answer, within twenty days of service;

(ii) within ninety days of filing an answer, prepare and file a *Martínez* report addressing the substance of the complaint;

(iii) within ninety days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within ninety days of filing an answer, submit a proposed order for dismissing the case based upon the summary judgment motion, in word processing format, to: [utdecf\\_prisonerlitigationunit@utd.uscourts.gov](mailto:utdecf_prisonerlitigationunit@utd.uscourts.gov).

Plaintiff is notified that if Defendants move for summary judgment Plaintiff cannot rest upon the mere allegations in the complaint. Instead, as required by Federal Rule of Civil Procedure 56(e), to survive a motion for summary judgment Plaintiff must allege specific facts, admissible in evidence, showing that there is a genuine issue remaining for trial.

#### **ORDER**

Accordingly, **IT IS HEREBY ORDERED** that:

(1) The United States Marshals Service shall serve a completed summons, a copy of the Complaint, (Docket Entry # 5), and a copy of this Order upon the above-listed defendants.

(3) Within twenty days of being served, Defendants must file answers or a motion to dismiss and proposed order, as outlined above.


(4) If filing (on exhaustion or any other basis) a *Martinez* report **with** a summary judgment motion and proposed order, Defendants must do so within ninety days of filing their answers.

(5) If served with a *Martinez* report and a summary judgment motion or motion to dismiss, Plaintiff may file a response within thirty days.

(6) Summary-judgment motion deadline is ninety days from filing of answer.

DATED this 16<sup>th</sup> day of November, 2011.

BY THE COURT:

  
\_\_\_\_\_  
JUDGE CLARK WADDOUPS  
United States District Court



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

DAVID KARL GOWERS,  
  
Plaintiff,  
  
v.  
  
OFFICER ESTEY et al.,  
  
Defendants.

**ORDER REQUIRING UTAH  
DEPARTMENT OF CORRECTIONS TO  
DISCLOSE INFORMATION TO U.S.  
MARSHALS SERVICE**

Case No. 2:11-CV-111 CW

District Judge Clark Waddoups

---

The Court has directed the United States Marshals Service to serve process in this case. See Fed. R. Civ. P. 4(c)(2). To do so, by statute, the United States Marshal "shall command all necessary assistance to execute its duties." See 28 U.S.C.S. § 556(c) (2011).

The Complaint identifies the following Utah Department of Corrections (UDOC) employees as Defendants:

**Officer F. Estey  
Officer T. Haleen  
Captain Devon Blood  
Caseworker Heidi Johnson  
Captain Don Taylor  
Lt. Christiansen  
Lt. R. Painter  
Captain Mel Coulter  
Captain Michael Allen  
Doyle Cutler  
Craig Balls  
Deputy Warden John Irons**


Under UDOC policy, service of process on current UDOC employees may be effected via authorized agent at the UDOC offices in Draper, Utah. If the named defendants are no longer employed by UDOC or UDOC is not authorized to accept service for any of these individuals, more information must be obtained from UDOC to complete service.

Accordingly, **IT IS HEREBY ORDERED** that: If UDOC is unable to accept service of process for the defendants identified above, UDOC shall disclose to the United States Marshals Service any information in its records that may help in identifying, locating and completing service of process upon the named defendants. Such information shall include, but is not limited to, the defendants' full names and any known aliases, dates of birth, Social Security numbers, driver's license numbers, all previous addresses, and last known addresses on file. The U.S. Marshal shall take all necessary measures to safeguard any personal information provided by UDOC to ensure that it is not disclosed to anyone other than the U.S. Marshals Service or Court officers.

**IT IS SO ORDERED.**

DATED this 16<sup>th</sup> day of November, 2011.

BY THE COURT:

  
JUDGE CLARK WADDOUPS  
United States District Court

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

**CENTRAL DIVISION**

---

**THOMAS B. MCCOY et al.,**

**Plaintiffs,**

**v.**

**EMCOR, INC. et al.,**

**Defendants.**

**ORDER TO SHOW CAUSE**

**Case No. 2:11CV192 DAK**

---

Plaintiffs filed a Complaint in this matter on February 18, 2011, and then filed an Amended Complaint on June 9, 2011. With one exception, all parties have been dismissed pursuant to stipulated motions. The only remaining Defendant is Ascend Holdings (dba Ascend HR Solutions) (“Ascend”). Plaintiffs filed an Executed Summons on June 21, 2011, but since that time, no attorney has appeared for Ascend, no Answer been filed by Ascend, and no action has been taken by Plaintiffs to prosecute their claims against Ascend.

Accordingly, Plaintiffs are directed to respond in writing by December 2, 2011 to inform the court as to why it has failed to prosecute this action as to Ascend. Failure to respond will result in dismissal of the case without prejudice.

DATED this 17<sup>th</sup> day of November, 2011.

BY THE COURT:



---

DALE A. KIMBALL

United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH    CENTRAL DIVISION**

---

**ANTHONY BRODZKI,**

**Plaintiff,**

**vs.**

**UTAH ATTORNEY GENERAL,**

**Defendant.**

**ORDER TO SHOW CAUSE**

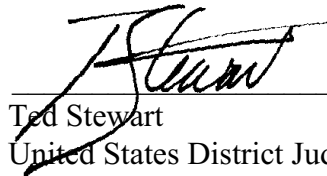
**Case No. 2:11-CV-277 TS**

---

Plaintiff filed this action on March 23, 2011. Since that time, Plaintiff has taken no further action to prosecute this case. Plaintiff is hereby ordered to show cause why the above captioned case should not be dismissed. Plaintiff is directed to respond in writing within fourteen (14) days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 17th day of November, 2011.

By



Ted Stewart

United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

Utah Coalition of La Raza, et al.,

Plaintiffs,

v.

Governor Gary Herbert and Attorney General  
Mark Shurtleff,

Defendants.

**ORDER GRANTING DOE  
PLAINTIFFS' MOTION FOR  
LEAVE TO PROCEED UNDER  
PSEUDONYMS**

Case No. 2:11-cv-00401-BCW

Judge: Brooke C. Wells

For good cause shown, and for the reasons set forth in their Motion for Leave to Proceed under Pseudonyms, it is hereby ordered that Plaintiffs Jane Doe #1, John Doe #1, and John Doe #2 are granted leave to proceed under those pseudonyms.

Dated this 16th day of Nov., 2011.

  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

Utah Coalition of La Raza, et al.,

Plaintiffs,

v.

Governor Gary Herbert and Attorney General  
Mark Shurtleff,

Defendants.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR LEAVE TO FILE  
DECLARATIONS UNDER SEAL**

Case No. 2:11-cv-00401-BCW

Judge: Brooke C. Wells

For good cause shown, and for the reasons set forth in their Motion for Leave to File Declarations Under Seal, it is hereby ordered that Plaintiffs Jane Doe #1, John Doe #2, and John Doe #3 are granted leave to file under seal their declarations in support of: (i) the Doe Plaintiffs' Motion for Leave to Proceed Under Pseudonyms; and (ii) Plaintiffs' Motion for Preliminary Injunction.

Dated this 16th day of Nov., 2011.

  
United States District Judge

2011 NOV 17 A 10:35

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BY: \_\_\_\_\_  
DEPUTY CLERK

REPUBLIC CREDIT ONE, L.P., a  
Delaware limited partnership,

Plaintiff,

vs.

DAVID BAKER, an individual;  
LAKEVIEW APARTMENTS, LLC, a Utah  
limited liability company; BRYAN  
ADAMSON, an individual; and RALPH  
BAKER, an individual,

Defendants.

**SCHEDULING ORDER**

Case No. 2:11-cv-00452-BSJ

District Judge Bruce S. Jenkins

Pursuant to Fed.R. Civ P. 16(b), the following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

**1. PRELIMINARY MATTERS**

**DATE**

Nature of claim(s) and any affirmative defenses:

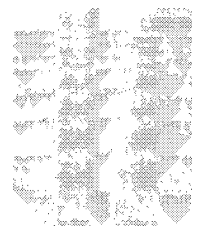
- |    |  |                 |
|----|--|-----------------|
| a. | Was Rule 26(f)(1) Conference held?                 | <u>11/14/11</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>11/14/11</u> |
| c. | Was 26(a)(1) initial disclosure completed?         | <u>11/30/11</u> |

**2. DISCOVERY LIMITATIONS**

**NUMBER**

- |    |  |           |
|----|--|-----------|
| a. | Maximum Number of Depositions by Plaintiff(s)  | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s)  | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>7</u>  |
| d. | Maximum Interrogatories by any Party to any Party  | <u>25</u> |

- e. Maximum requests for admissions by any Party to any Party 25
- f. Maximum requests for production by any Party to any Party 25
  
- 3. **AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>1</sup>** **DATE**
  - a. Last Day to File Motion to Amend Pleadings 11/30/11
  - b. Last Day to File Motion to Add Parties 11/30/11
  
- 4. **RULE 26(a)(2) REPORTS FROM EXPERTS<sup>2</sup>**
  - a. Plaintiff 03/30/12
  - b. Defendant 03/30/12
  
- 5. **OTHER DEADLINES**
  - a. Discovery to be completed by:
    - Fact discovery 03/30/12
    - Expert discovery 03/30/12
  - b. Deadline for filing dispositive or potentially dispositive motions 04/16/12
  
- 6. **SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**
  - a. Referral to Court-Annexed Mediation No
  - b. Referral to Court-Annexed Arbitration No
  - c. Evaluate case for Settlement/ADR on 02/01/12
  - d. Settlement probability: Fair
  
- 7. **TRIAL AND PREPARATION FOR TRIAL: *Specify # of days for Bench or Jury trial as appropriate. Shaded areas will be completed by the court.***
  - a. Rule 26(a)(3) Pretrial Disclosures<sup>3</sup>
    - Plaintiff
    - Defendant
  - b. Objections to Rule 26(a)(3) Disclosures  
(if different than 14 days provided in Rule)





DATE

c. Special Attorney Conference<sup>5</sup> on or before

d. Settlement Conference<sup>6</sup> on or before

e. Proposed Pretrial Order - *Disputed issues identified, Roster of witnesses & Exhibits for case in chief, signed by counsel*

f. Final Pretrial Conference

05/23/12

05/25/12

@ 9:30 am

g. Trial

Length

Time

Date

i. Bench Trial

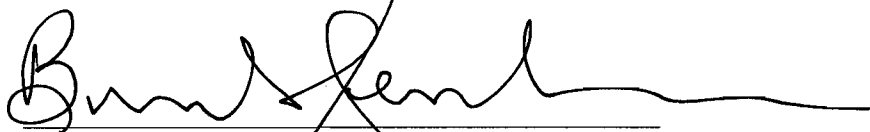
3 days

8. OTHER MATTERS:

~~Counsel should contact chambers staff of the judge presiding in the case regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.~~

Signed H/K, 2011.

BY THE COURT:



Honorable Bruce S. Jenkins

FILED  
U.S. DISTRICT COURT  
2011 NOV 17 A 10:35  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

**IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

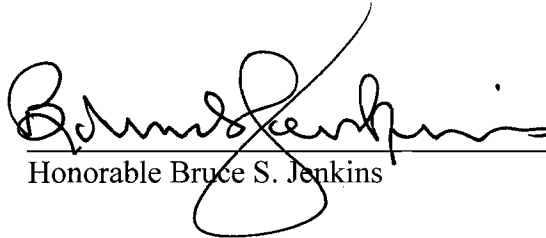
Judge Bruce S. Jenkins

The Court having read the submissions of the parties and after hearing argument and considering itself fully advised hereby rules as follows:

Defendants' Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted is DENIED.

SO ORDERED this 16<sup>TH</sup> day of Nov., 2011.

BY THE COURT:



Honorable Bruce S. Jenkins

APPROVED AS TO FORM:

THE JUSTICE FIRM, LLC

\_\_\_\_\_  
Bryan T. Adamson

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of November, a true and correct copy of the foregoing proposed ***ORDER DENYING DEFENDANTS' RULE 12(B)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED*** was emailed to the following:

Bryan T. Adamson  
The Justice Firm, LLC  
132 W. Tabernacle Street  
St. George, Utah 84770-3337

/s/ Brinton M. Wilkins

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

In re:

ICEROK, LLC,  
Debtor.

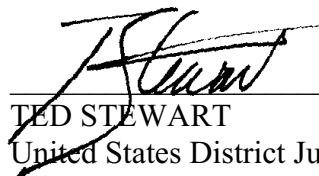
ORDER TO SHOW CAUSE

Case No. 2:11-CV-459 TS

This matter is before the Court on an appeal from the Bankruptcy Court. Appellant's opening brief was due on August 5, 2011. Appellant has not filed its opening brief and has not taken any other action. Appellant is hereby ordered to show cause why the above captioned case should not be dismissed. Appellant is directed to respond in writing within fourteen (14) days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

DATED November 17, 2011.

BY THE COURT:



TED STEWART  
United States District Judge

ESTATE OF JAMES D. REDD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:11-cv-478-TS
	)	
DANIEL LOVE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

Having considered the Individual Federal Defendants' Unopposed Motion for Enlargement of Time, it is hereby ORDERED that the motion is GRANTED. Accordingly, the individual federal defendants shall file their motion to dismiss Plaintiffs' complaint no later than January 19, 2012.

Signed this 17th day of November.

  
CHIEF JUDGE TED STEWART

FILED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION  
NOV 14 A 10:35

\*\*\*\*\* DISTRICT OF UTAH \*\*\*\*\*

IHC HEALTH SERVICES, INC., dba  
AMERICAN FORK HOSPITAL

Plaintiff,

vs.

ALTIVUS HEALTH PLANS, INC.,

Defendant.

BY: \_\_\_\_\_  
DEPUTY CLERK  
Civil No. 2:11-CV-00513-BSJ

**ORDER**

\*\*\*\*\*

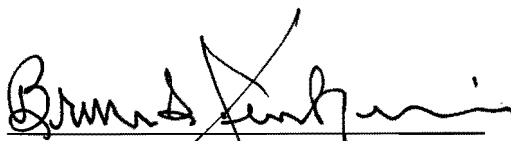
The above matter came on for hearing on the 2<sup>nd</sup> day of November, 2011, on Defendant's Motion to Dismiss (Dkt. No. 11).

After due consideration, the Court **GRANTS** Defendant Altivus' Motion to Dismiss and does so without prejudice. Plaintiff may file an amended complaint within 10 days of the date of this Order.

**SO ORDERED.**

DATED this 16 day of November, 2011.

BY THE COURT:



Bruce S. Jenkins  
United States Senior District Judge

Dax D. Anderson (10168)  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Phone: (801) 328-3600  
Fax: (801) 321-4893  
Email: [tzenger@kmclaw.com](mailto:tzenger@kmclaw.com)

Attorney for Defendant *Cellairis*

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

ZAGG INTELLECTUAL PROPERTY  
HOLDING CO., INC., a Nevada corporation,

Plaintiff,

vs.

NLU PRODUCTS, L.L.C., a Utah limited liability company; WRAPSOL, L.L.C., a Delaware limited liability company; XO SKINS, LLC, a Utah limited liability company; FUSION OF IDEAS, INC., a California corporation; GHOST ARMOR LLC, an Arizona limited liability company; CLEAR-COAT LLC, a Pennsylvania corporation; CASE-ARI, LLC, a Georgia limited liability company; UNITED SGP CORP., a California corporation; PEDCO, LLC, an Arizona limited liability company; BEST SKINS EVER, a Colorado company; STEALTH GUARDS, a Michigan company; SKINOMI, LLC, a California company; CELLAIRIS, a Georgia company; and VIRTUOSITY PRODUCTS, LLC, a Utah limited liability company.

Defendants.

Civil Action No. 2:11-cv-00517-PMW

Magistrate Judge Paul M. Warner

**ORDER**

By motion of Defendant, and stipulation of the parties;


**IT IS ORDERED:**



Defendant's motion for Extension of Time is GRANTED. Defendant, Cellairis shall file its answer or otherwise respond to the Amended Complaint by **December 7, 2011**.

DATED this 17<sup>th</sup> day of November, 2011.

BY THE COURT


By:   
\_\_\_\_\_  
MAGISTRATE PAUL WARNER  
UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT  
RT  
2011 NOV 17 A 10:35  
VISION  
DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

## ORDER

BY THE COURT:

  
\_\_\_\_\_  
Bruce S. Jenkins  
United States Senior District Judge

FILED  
U.S. DISTRICT COURT

2011 NOV 17 A 10:35

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

David W. Parker, Esq. (5125)  
Scott A. Trujillo, Esq. (13386)  
Lexington Square  
6007 South Redwood Road  
Salt Lake City, UT 84123-5261  
Telephone: (801) 328-5600  
Facsimile: (801) 328-5651  
Email: david@utahdisabilitylaw.com

---

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR DISTRICT OF UTAH, CENTRAL DIVISION

---

SHAUNA TURNER,  
Plaintiff,

v.

MICHAEL J. ASTRUE, as  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION

Defendant.

Case No.: 2:11cv00566 DS

Judge: David Sam

---

~~PROPOSED~~ ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL

---


This matter having come before the Court upon the Amended Motion to Withdraw as Counsel ("Motion") submitted by David W. Parker and Scott A. Trujillo of the Law Office of David W. Parker, P.C. ("Law Office"). The Court having reviewed the Motion and other relevant information, it is hereby

**ORDERED** that David W. Parker, Esq. and Scott A. Trujillo, Esq., and the Law Office of David W. Parker, P.C. are hereby relieved of further responsibility to represent Shauna Turner in this case; and it is

**FURTHER ORDERED** that counsel and Parties in this case shall serve copies of such pleadings, motions, orders, correspondence, and other documents, as may be necessary, upon Shauna Turner, at her last known address: Post Office Box 422, Kamas, Utah 84036.

DATED this 16<sup>th</sup> day of November, 2011.

BY THE COURT:

  
\_\_\_\_\_  
HONORABLE DAVID SAM  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT

**CERTIFICATE OF MAILING**

I hereby certify that on the 10<sup>th</sup> day of November 2011, I mailed the foregoing document, by depositing said document in the United States Postal Service, postage prepaid, and addressed to the following:

Shauna Turner  
P.O. Box 422  
Kamas, UT 84036

/s/ \_\_\_\_\_  
David W. Parker

Charles L. Roberts (5137)  
*croberts@wnlaw.com*  
Robyn L. Phillips (7425)  
*rphillips@wnlaw.com*  
Matthew A. Barlow (9596)  
*mbarlow@wnlaw.com*  
WORKMAN | NYDEGGER A PROFESSIONAL CORPORATION  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 533-9800  
Facsimile: (801) 328-1707

Attorneys for Plaintiff  
Del Sol, L.C.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

DEL SOL, L.C., a Utah corporation,

Plaintiff,

v.

CARIBONGO, L.L.C., a Florida limited  
liability corporation,

Defendant.

Civil Action No: 2:11-cv-00573-DAK

**ORDER GRANTING  
DEL SOL, L.C.'S MOTION FOR LEAVE  
TO FILE A SURREPLY MEMORANDUM  
IN OPPOSITION TO CARIBONGO'S  
REPLY TO CARIBONGO'S MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION AND IMPROPER VENUE,  
OR IN THE ALTERNATIVE, TRANSFER  
PROCEEDINGS**

JUDGE DALE A. KIMBALL

Before the Court is Plaintiff Del Sol, L.C.'s Motion for Leave to File a Surreply Memorandum in Opposition to Caribongo's Reply to Caribongo's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue, or in the Alternative, Transfer Proceedings. Having considered the Motion, and good cause appearing therefore, the Court determines that the Motion should be and hereby is GRANTED.

Therefore, IT IS HEREBY ORDERED that Plaintiff Del Sol, L.C. is given leave to file the Surreply Memorandum and supporting declaration attached as Exhibits 1 and 2 to Del Sol L.C.'s Motion For Leave To File a Surreply Memorandum in Opposition to Caribongo's Reply to Caribongo's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue, or in the Alternative, Transfer Proceedings.

SO ORDERED this 16<sup>th</sup> day of November, 2011.

  
Honorable Judge Dale A. Kimball  
United States District Judge

Submitted by:

WORKMAN NYDEGGER

By: /s/ Robyn L. Phillips

Charles L. Roberts  
Robyn L. Phillips  
Matthew A. Barlow

Attorneys for Plaintiff  
DEL SOL, L.C.

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

2011 NOV 17 A 10:35

DISTRICT OF UTAH

LIFELAST, INC.,  
Plaintiff,

v.

CORROSION CONTROL TECHNOLOGIES,  
INC.; and JEFFREY MATTSON,  
Defendants.

**PROTECTIVE ORDER**  
BY: DEPUTY CLERK

Case No. 2:11-CV-00608

Judge Bruce S. Jenkins

Pursuant to the stipulated motion of the parties for a protective order regarding confidential business information and on a showing of good cause,

IT IS HEREBY ORDERED that:

(1) To identify material provided through discovery in this case that the parties believe in good faith is Confidential Business Information (e.g., trade secrets, proprietary information, or other confidential research, processes, development, commercial or financial information, whether written or oral, photographic, drawings, or electronic), the Parties shall use the designations "CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (a) on each page of each document, and (b) on the surface of any computer disk or other tangible object containing information in electronic format it claims is Confidential Business Information prior to producing such items for discovery purposes.

(2) A party may withdraw its designation of confidentiality at any time.

(3) Other than the Court, only the parties' counsel, officers, and retained experts may review Confidential Business Information during discovery after agreeing in writing to (a) keep the information confidential and for the limited purposes of this litigation and (b) otherwise be

bound to by a Protective Order. Confidential Business Information marked “HIGHLY CONFIDENTIAL” may only be reviewed by the parties’ counsel and retained experts, but not a party or the party’s officers that did not so designate the material.

(4) All hard copies of Confidential Business Information as allowed in this Protective Order shall be possessed and maintained solely at the offices of counsel or any expert witness retained by any of the parties.

(5) All hard copies of Confidential Business Information held by a party or their counsel or expert witness shall be returned to the owner of such information’s counsel of record at settlement, dismissal, or other resolution of this case as to that party within thirty (30) days of such resolution. Any party holding an electronic copy of Confidential Business Information shall destroy such information at settlement, dismissal, or other resolution of this case as to that party within thirty (30) days of such resolution.

(6) If at any time a party objects to the designation of material(s) as Confidential Business Information, the objecting party may notify the designating party in writing of such objection. The notice shall identify the material(s) in question and shall set forth with reasonable specificity the reasons for such objection. The designating party and the objecting party shall meet together promptly and use good faith efforts to resolve such disagreements regarding the identification of such material(s) as Confidential Business Information. If the parties are unable to reach an agreement, the designating party may within five (5) business days of such meeting either withdraw such designation or apply to the Court for a determination regarding the designation of such material(s) as Confidential Business Information. If the designating party applies to the Court for such a ruling, the confidentiality of such material(s) shall remain in place until the Court issues its ruling. If the designating party does not apply to the Court within such

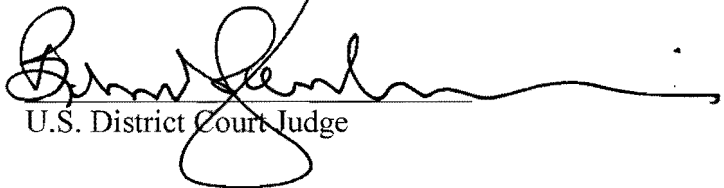


five (5) business day period, the designation of Confidential Business Information shall be deemed withdrawn with respect to such material(s).

(7) Information designated as Confidential Business Information and produced to another party shall not be used or disclosed by such party or any other person for any purpose, business or otherwise, other than the trial of this case, preparation for trial, and any related appeals.

Signed November 16, 2011.

BY THE COURT:



U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2011 NOV 17 A 10:35

DISTRICT OF UTAH

BY: DEPUTY CLERK

LIFELAST, INC.,  
Plaintiff,

v.

CORROSION CONTROL TECHNOLOGIES,  
INC.; and JEFFREY MATTSON,  
Defendants.

**SCHEDULING ORDER**

Case No. 2:11-CV-00608

Judge Bruce S. Jenkins

Pursuant to Fed.R. Civ P. 16(b), the following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

- |           |  |                 |
|-----------|--|-----------------|
| <b>1.</b> | <b>PRELIMINARY MATTERS</b>   | <b>DATE</b>     |
| a.        | Rule 26(f)(1) Conference held  | <u>09/21/11</u> |
| b.        | Rule 26(a)(1) initial disclosures  | <u>10/15/11</u> |
| <b>2.</b> | <b>DISCOVERY LIMITATIONS</b>   | <b>NUMBER</b>   |
| a.        | Maximum Number of Depositions by Plaintiff(s)  | <u>20</u>       |
| b.        | Maximum Number of Depositions by Defendant(s)  | <u>20</u>       |
| c.        | Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>8</u>        |
| d.        | Maximum Interrogatories by any Party to any Party  | <u>50</u>       |
| e.        | Maximum requests for admissions by any Party to any<br>Party                             | <u>50</u>       |
| f.        | Maximum requests for production by any Party to any<br>Party                             | <u>50</u>       |
| <b>3.</b> | <b>AMENDMENT OF PLEADINGS/ADDING PARTIES</b>   | <b>DATE</b>     |
| a.        | Last Day to File Motion to Amend Pleadings   | <u>12/30/11</u> |
| b.        | Last Day to File Motion to Add Parties   | <u>12/30/11</u> |

4. **RULE 26(a)(2) REPORTS FROM EXPERTS** **DATE**

- a. Plaintiff 05/15/12  
b. Defendant 06/15/12  
c. Counter reports 06/30/12

5. **OTHER DEADLINES** **DATE**

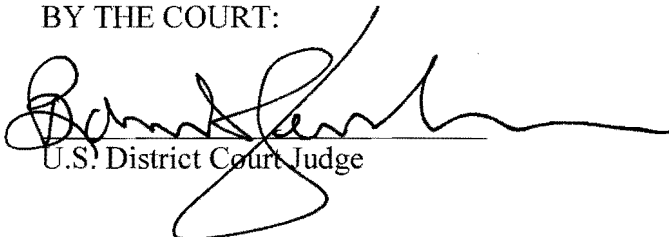
- a. Discovery to be completed by:  
Fact discovery 04/16/12  
Expert discovery 07/30/12  
b. Final date for supplementation of disclosures and  
discovery under Rule 26(e) 07/30/12  
c. Deadline for filing dispositive motions 08/31/12

7. **TRIAL AND PREPARATION FOR TRIAL** **TIME** **DATE**

- a. Rule 26(a)(3) Pretrial Disclosures — *Proposed pre-trial order* 11/7/12  
*signed by Counsel, dispute facts, witnesses, exhibits. filed with the Court,*  
b. Final Pretrial Conference 9:30 a.m. 11/8/12

Signed November 1<sup>st</sup> 2011.

BY THE COURT:

  
U.S. District Court Judge

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

ADRIANNA BERNEIKE,

Plaintiff,

v.

CITIMORTGAGE, INC.,

Defendant.

MEMORANDUM DECISION AND ORDER  
GRANTING DEFENDANT'S MOTION TO  
DISMISS

Case No. 2:11-cv-614 BCW

Magistrate Judge Brooke Wells

---

This matter is before the court on a motion by Defendant CitiMortgage, Inc. to dismiss Plaintiff Adrianna Berneike's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.<sup>1</sup> The court has carefully reviewed the written memoranda submitted by the parties and has concluded that a hearing would not significantly aid it in its determination of the motion.<sup>2</sup> Having fully considered the motion, memoranda, other materials submitted by the parties and relevant case law, the court enters the following decision GRANTING Defendant's Motion to Dismiss.

**BACKGROUND**

The court takes the following asserted facts from Plaintiff's Complaint and for purposes of this motion assumes that the factual allegations are true.<sup>3</sup> Plaintiff Adrianna Berneike is a resident of Utah and Defendant CitiMortgage Inc. (Citi) is a New York company with its principal place of business in New York, which also does business in the state of Utah.<sup>4</sup>

---

<sup>1</sup> Docket no. 4.

<sup>2</sup> See DUCivR 7-1(f) (2010).

<sup>3</sup> See *Jordan-Arapahoe, LLP v. Bd. of County Comm'rs*, 633 F3d 1022, 1026 (10th Cir. 2011).

<sup>4</sup> Plaintiff also names Defendant Does 1-50 as "individuals or entities presently unknown . . . but who are liable to Berneike pursuant to the claims for relief set forth [in the Complaint]." Complaint p. 1. Plaintiff notes that when

Plaintiff receives a statement from Citi every month concerning her mortgage. On approximately January 13, 2010, Berneike began sending letters to Citi asking about alleged inaccuracies in her account and alleged errors in her statement. Initially Plaintiff sent 28 different letters “addressing issues/errors regarding her mortgage account, each letter requesting information regarding an individual concern she had with increases in her payments for each month.”<sup>5</sup> Plaintiff asserts that each of these individual letters constituted a qualified written request (QWR) pursuant to the Real Estate Settlement Procedures Act (RESPA). Plaintiff sent over one hundred so called QWR requests regarding alleged billing errors.<sup>6</sup>

On February 3, 2010, Plaintiff received two responsive letters from Citi that explained the possible differences in monthly payments based upon fluctuations in her escrow account that is associated with the mortgage loan. Plaintiff asserts that these responsive letters were “very vague and ambiguous” and Citi failed to acknowledge receipt of QWRs within the required time frame pursuant to RESPA.

Following receipt of Citi’s letters, Plaintiff sent numerous additional QWRs to Citi, however, no response to these complaint letters were ever received by Plaintiff. Subsequent to these letters Plaintiff received a letter demanding a late fee for a return check on one of her payments and has suffered “significant anxiety, worry and frustration” over what has happened with Defendant. In short, Plaintiff cannot afford to be double billed for the mortgage payment on

---

she discovers the involvement of those individuals or entities she will amend the Complaint. Plaintiff has not sought to amend the Complaint to add any additional parties and there is nothing before the court indicating that such an amendment is justified. Therefore for purposes of this decision the court only addresses Plaintiff’s claims against the named and known Defendant CitiMortgage.

<sup>5</sup> Complaint p. 2.

<sup>6</sup> Op. p. 6.

her residence and is allegedly facing bankruptcy and loss of her home as a result of Citi's wrongful conduct.<sup>7</sup>

Bernike brought this case before the court asserting three causes of action seeking damages for *inter alia* each violation of RESPA and for costs of suit and attorneys fees. After Bernike filed this action in state court, Defendant removed the action to federal court and submitted a motion to dismiss on all of Bernike's causes of action.

### **DISCUSSION**

Defendant Citi moves to dismiss Plaintiff Adrianna Berneike's Complaint. Berneike's Complaint contains the following causes of action: (1) Violation of the Utah Consumer Sales Practices Act (UCSPA), (2) Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing, and (3) Violation of the Real Estate Settlement Procedures Act (RESPA).

In considering a motion to dismiss under Rule 12(b)(6), "the court presumes the truth of all well-pleaded facts in the complaint, but need not consider conclusory allegations [which] are allegations that do not allege the factual basis for the claim."<sup>8</sup> "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"<sup>9</sup> A claim has facial plausibility "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

---

<sup>7</sup> Complaint ¶¶ 27-29.

<sup>8</sup> *Margae, Inc. v. Clear Link Tech.*, 620 F.Supp.2d 1284, 1285 (D.Utah 2009) (citing *Tal v. Hogan*, 453 F.3d 1244, 1252 (10th Cir. 2006), *cert. denied*, 549 U.S. 1209 (2007); and *Mithcell v. King*, 537 F.2d 385, 386 (10th Cir. 1976)).

<sup>9</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955 (2007)).

misconduct alleged.”<sup>10</sup> The standard is not a “probability requirement,” but it requires more than a “sheer possibility that a defendant has acted unlawfully.”<sup>11</sup>

Before turning to Berneike’s individual causes of action the court addresses her central argument that Defendant’s motion to dismiss violates Rule 12(b)(6) by “asking this Court to consider matters outside the pleadings.”<sup>12</sup> The court disagrees. In *GFF Corp. v. Assoc. Wholesale Grocers, Inc.*,<sup>13</sup> the Tenth Circuit addressed when a court may consider outside materials as part of a Rule 12(b)(6) motion to dismiss without turning it into a motion for summary judgment. The court stated: “if a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff’s claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss.”<sup>14</sup> If it were otherwise, “a plaintiff with a deficient claim could survive a motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relied.”<sup>15</sup>

Plaintiff claims that each letter she sent to Defendant which inquired or complained about the alleged inaccuracies in her mortgage account was a qualified written request (QWR) under RESPA. Pursuant to RESPA a QWR is “written correspondence from the borrower to the servicer” that follows certain requirements.<sup>16</sup> Plaintiff alleges that Defendant violated RESPA

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Op. p. 7.

<sup>13</sup> 130 F.3d 1381.

<sup>14</sup> *GFF Corp. v. Assoc. Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997).

<sup>15</sup> *Id.*

<sup>16</sup> 24 C.F.R. § 3500.21(a), (e)(2) (“a qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower”).

by failing to provide a written response acknowledging receipt of the QWR within 20 business days.<sup>17</sup> In the same subsection that sets forth the deadline for a servicer to acknowledge receipt of a QWR is the following: “By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.”<sup>18</sup>

Defendant argues the “Welcome Letter,” attached as an exhibit to its motion, complies with RESPA and provides notice of where Plaintiff should have sent any QWRs. Plaintiff takes issue with the Welcome Letter arguing that it is outside the pleadings and should be stricken. The document, however, is incorporated by reference in Plaintiff’s Complaint and is central to her QWR claim because it provides the proper address to send a QWR claim as allowed under RESPA. Bernike failed to attach the letter to her complaint and does not dispute the authenticity of the letter attached by Defendant. Therefore, the court declines Plaintiff’s invitation to strike the letter and finds it may be considered in the context of this motion. In similar fashion, the court finds it is proper under *GFF Corp.* to consider the statements sent to Plaintiff by Citi because Plaintiff specifically refers to them in her Complaint, fails to attach them and does not dispute their authenticity.<sup>19</sup> These statements are also central to Plaintiff’s claims of error which prompted the sending of the QWRs to Citi. Therefore, in the instant case, the Note and the Trust Deed as well as the statements received by Bernike from Defendant Citi and the Welcome

---

<sup>17</sup> See *id.* § (e)(1); Complaint ¶ 14.

<sup>18</sup> *Id.*

<sup>19</sup> Complaint ¶¶ 5-6, see also Op. p. 4.



Letter may be properly considered by the court in order to determine if Berneike has sufficiently stated a claim for relief.<sup>20</sup>

## **I. Violation of the Utah Consumer Sales Practices Act**

Berneike's First Cause of Action claims that Citi violated the Utah Consumer Services Protection Act (UCSPA) by committing deceptive acts under Utah Code Ann. § 13-11-4(2)(a) when Citi sent inaccurate billings and failed to properly respond to her OWRs. Plaintiff argues that Citi is a supplier within the meaning of the statute and that the transaction here was also a consumer transaction within the meaning of the statute.

The UCSPA defines a supplier as "seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transaction, whether or not he deals directly with the consumer."<sup>21</sup> Under UCSPA a consumer transaction is defined as "a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance)."<sup>22</sup>

Recently, this court held that UCSPA does not apply to mortgage loans, such as this one, because a mortgage loan is not a consumer transaction as defined by UCSPA and the servicer of the loan, like Citi is here, is not a supplier as set forth in the UCSPA.<sup>23</sup> The court finds no reason to depart from this holding.

Further, this court has also held that "the UCSPA, by its own terms, does not apply to 'an act or practice required or specifically permitted by or under federal law, or by or under state

---

<sup>20</sup> See *GFF Corp.*, 130 F.3d at 1384 (noting that in addition to using well-pleaded facts from the complaint, a court is also able to consider documents that are "referred to in the complaint," which are "central to plaintiff's claims," and that are submitted to the court by the defendant, if the submissions qualify as "indisputably authentic cop[ies].").

<sup>21</sup> Utah Code Ann. § 13-11-3(6).

<sup>22</sup> Utah Code Ann. § 13-11-3(2)(a)

<sup>23</sup> See *Ayala v. American Home Mortgage Servicing, Inc.*, 2011 WL 3319543 \*2 (D.Utah).

law.”<sup>24</sup> Therefore, if there is a specific law that regulates the transaction at issue, then the UCSPA does not apply to the transaction.

Plaintiff argues the UCSPA is not preempted by other laws. The court disagrees and has already held that the UCSPA does not apply to trustee conduct under a trust deed because that conduct is governed by “the comprehensive and detailed regulatory scheme of Utah’s trust deed statute.”<sup>25</sup> Other aspects of the transactions between Berneike and Citi are governed by federal laws such as the Truth in Lending Act and RESPA. Thus, UCSPA does not apply to the transaction in this case.

Plaintiff also alleges that if this court dismisses her third cause of action under RESPA, then there would be no preemption by RESPA in her Complaint as it relates to her first cause of action under UCSPA. Plaintiff’s narrow view of preemption is not supported by the law.

Therefore, for the reasons set forth the court dismisses with prejudice Berneike’s cause of action for violating UCSPA.

## **II. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**

Berneike’s Second Cause of Action alleges both a breach of contract claim and a claim for breach of the implied covenant of good faith and fair dealing. Berneike alleges Citi has

“violated the terms of the note and trust deed . . . in the way that they have demanded payments and handled the monthly mortgage payment account associated with [Plaintiff’s] loan by making improper demands for payment/improper billings, charging excessive and illegal fees, failing to make proper accountings as to monies owed and received, failing to make proper credits or refunds, violating their fiduciary duties as trustee, violating RESPA, and the like.”<sup>26</sup>

---

<sup>24</sup> *Hoverman v. Citimortgage Inc.*, 2011 WL 3421406 \*9 (D.Utah) (quoting Utah Code Ann. § 13-11-22(a)).

<sup>25</sup> *Burnett v. Mortgage Electronic Registration Sys.*, 2009 WL 3582294 \*13 (D.Utah).

<sup>26</sup> Complaint ¶ 36.

To constitute a breach of contract, (1) a contract must exist, (2) the party seeking recovery must be performing his or her part of the contract, (3) the other party must breach the contract, and (4) damages must result from the breach of the contract.<sup>27</sup>

The implied covenant of good faith and fair dealing is inherently part of every contract. It requires the contracting parties not to do anything to injure the other party's right to receive the benefits of the contract.<sup>28</sup> The implied covenant of good faith and fair dealing, however, "cannot be read to establish new, independent rights or duties to which the parties did not agree ex ante."<sup>29</sup>

Defendant argues that Plaintiff's allegations "do not even rise to the level of 'threadbare recitals of the elements of a cause of action, supported by mere conclusory statements,' which are to be rejected on a motion to dismiss."<sup>30</sup> In contrast, Plaintiff alleges that she has met the requirements of notice pleading and cites to a number of cases from the Seventh Circuit in support of her argument. Plaintiff's arguments fail because they apply a pleading standard that is no longer valid. The cases cited to by Plaintiff were inherently overruled by *Twombly* and courts have recognized that the pleading standard originally set forth in *Conley v. Gibson*,<sup>31</sup> which is applied in the cases cited to by Plaintiff, is no longer valid.<sup>32</sup>

Additionally, Bernike has not sufficiently alleged the she performed her portion of the contract or that Citi breached its portion of the contract. Bernike states that the "actions

---

<sup>27</sup> *Bair v. Axiom Design, LLC*, 2001 UT 20, ¶ 14, 20 P.3d 388 (citing *Nuttal v. Berntson*, 83 Utah 535, 30 P.2d 738, 741 (Utah 1934)).

<sup>28</sup> *Eggert v. Wasatch Energy Corp.*, 2004 UT 28, ¶ 14, 94 P.3d 193

<sup>29</sup> *Oakwood Village LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 45, 104 P.3d 1226.

<sup>30</sup> Mem. in sup. p. 5 (quoting *Twombly*, 550 U.S. 544, 555 (2007)).

<sup>31</sup> 355 U.S. 41 (1957).

<sup>32</sup> See *Rilery v. Vilsack*, 665 F.Supp.2d 994 (W.D.Wis. 2009) (acknowledging that in *Twombly* the Supreme Court retired the standard set forth in *Conley*); *E.E.O.C. v. Concentra Health Services, Inc.*, 496 F.3d 773, 777 (7th Cir. 2007) (noting cases that are "no longer valid in light of the Supreme Court's recent rejection of the famous remark in *Conley v. Gibson*").

complained of herein violated and continue to violate the terms of the Note, and the covenant of good faith and fair dealing.”<sup>33</sup> Yet, Bernike has failed to provide any examples of actions performed by Citi that injured her right to receive the benefits of the contract. Broad legal conclusions, like those made by Bernike, fail to meet the pleading standard. Therefore, the court dismisses with prejudice Bernike’s Second Cause of Action.<sup>34</sup>

### **III. Violation of the Real Estate Settlement Procedures Act**

Bernike’s Third Cause of Action asserts violations of RESPA by Citi when it sent incorrect billings and failed to timely respond to Bernike’s QWR requests. The facts do not support Plaintiff’s position. First, none of the QWR requests were sent to the proper address that Citi designated to receive such requests pursuant to RESPA. Plaintiff asserts that she did not have notice of that address and the Welcome Letter which provided the notice is outside of the pleadings and should not be considered. The court has already rejected this argument as set forth above. Further, even if the court were to completely disregard the Welcome Letter the statements received by Plaintiff also provided the proper address to mail a QWR.<sup>35</sup> Plaintiff admits to receiving statements and thus by her own admission had access to the proper address to mail QWRs, yet she failed to do so. Therefore, there can be no violations of RESPA as alleged by Plaintiff.

Additionally as it relates to the two letters received by Plaintiff from Citi, they would fall within the required timelines and therefore cannot constitute a violation of RESPA.

Accordingly, the court dismisses with prejudice Bernike’s Third Cause of Action.

---

<sup>33</sup> Complaint ¶ 37.

<sup>34</sup> See *Hoverman v. Citimortgage Inc.*, 2011 WL 3421406 (dismissing both a breach of contract claim and a breach of the implied covenant of good faith and fair dealing claim for a failure to adequately plead the causes of action).

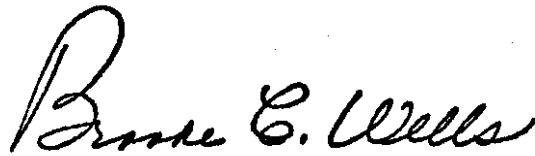
<sup>35</sup> See ex. 2 attached to Def.’s reply memoranda.

Finally, Plaintiff asserts that she should be given the opportunity to amend her Complaint. Based upon the facts of this case, however, leave to amend would be improper and any proposed amended complaint would be subject to dismissal just like the current complaint.<sup>36</sup> Therefore, the court denies Plaintiffs request to amend the Complaint.

### **ORDER**

For the reasons set forth above, Defendant Citi's Motion to Dismiss is GRANTED. All of Plaintiff's Causes of Action are DISMISSED with PREJUDICE and the Clerk of the Court is directed to close the case.

DATED this 17 November 2011.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter "B" is large and loops around the first part of the name. The signature is positioned above a horizontal line.

Brooke C. Wells  
United States Magistrate Judge

---

<sup>36</sup> See *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006); *Bradley v. Val-Mejias*, 379 F.3d 892, 901 (10th Cir. 2004);

FILED  
U.S. DISTRICT COURT

2011 NOV 15 P 1:43

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**BURBIDGE MITCHELL & GROSS**, a general  
partnership,

Plaintiff,

-VS-

**TIMOTHY OLSON**, an individual; **KENNETH  
W. GRISWOLD**, an individual; **PAUL H.  
PETERS**, an individual; **C AND M  
PROPERTIES, LLC**, a Utah limited liability  
company; **HIGH MOUNTAIN PARTNERS,  
LLC**, a Utah limited liability company;  
**JJRRNL TRUST 1998**; and **DOES 1-10**,

Defendants.

**ORDER ADMITTING ALAN K. HYDE  
PRO HAC VICE**

Case No. 2:11cv00640 DB

Honorable Dee V. Benson  
Magistrate Judge Samuel Alba

It appearing to the Court that Petitioner Alan K. Hyde meets the *pro hac vice* admission requirements of DU Civ R 83-1.1(d), the motion for the admission *pro hac vice* of Alan K. Hyde in the United States District Court, District of Utah in the subject case is **GRANTED**.

**DONE** this 14<sup>th</sup> day of November, 2011.

BY THE COURT:



HONORABLE DEE V. BENSON  
United States District Court Judge

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

RUSTY H. WILLIAMS,	)	<b>O R D E R</b>
	)	
Plaintiff,	)	Case No. 2:11-CV-647 TS
	)	
v.	)	District Judge Clark Waddoups
	)	
DONNA KENDALL et al.,	)	
	)	
Defendants.	)	

---

Plaintiff, Rusty H. Williams filed a *pro se* prisoner civil rights complaint. See 42 U.S.C.S. § 1983 (2011). The Court has already granted Plaintiff's application to proceed *in forma pauperis* and ordered him to pay an initial partial filing fee (IPFF). Since that order, Plaintiff has moved the Court to waive his IPFF and submitted documentation showing he cannot pay it.

IT IS HEREBY ORDERED that the Court grants Plaintiff's motion to waive his IPFF. (See Docket Entry # 8.) However, Plaintiff must still eventually pay \$350, the full amount of the filing fee. To do this, Plaintiff must make monthly payments of 20% of the preceding month's income credited to his account when the account balance reaches \$10.

DATED this 16<sup>th</sup> day of November, 2011.

BY THE COURT:



JUDGE CLARK WADDOUPS  
United States District Court

FILED  
U.S. DISTRICT COURT

DISTRICT OF UTAH

BY: DEPUTY CLERK

\* \* \* \* \*

Civil No. 2:11-CV-0659 BSJ

## ORDER

WALMART STORES,

Defendant.

\* \* \* \* \*

SO ORDERED.

DATED this 16 day of November, 2011.

BY THE COURT:

BY THE COURT:



Bruce S. Jenkins  
United States Senior District Judge



*Proposed Order Prepared By:*  
James L. Barnett (7462)  
Darren G. Reid (11163)  
HOLLAND & HART LLP  
222 South Main Street, Suite 2200  
Salt Lake City, UT 84101  
Telephone: (801) 799-5800  
Fax: (801) 799-5700  
jbarnett@hollandhart.com  
dgreid@hollandhart.com

*Attorneys for defendants*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

LIME A WAY, LLC, a Utah limited liability  
company; SCOTT MCLACHLAN, an  
individual; DREW DOWNS, an individual;  
and DAN CARY, an individual,

Plaintiffs,

v.

DAVID LOVETT, an individual; and  
TOPLIFF INVESTMENT COMPANY, LLC,  
a Nevada limited liability company,

Defendants.

**ORDER EXTENDING DEADLINES**

Civil No. 211-cv-716

Magistrate Brooke Wells

Judge Tena Campbell

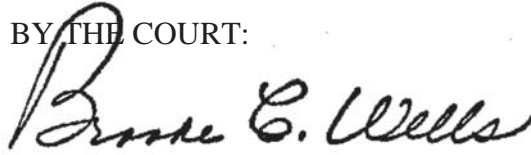
Based upon the Stipulation to Extend Deadlines, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiffs shall have  
until November 23, 2011 to file an opposition to defendants' Motion to Disqualify Counsel and  
that defendants shall have until December 1, 2011 to respond to plaintiffs' Complaint.

IT IS SO ORDERED.

DATED this 17 day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large, looping initial 'B'.

Judge ~~Tena Campbell~~

Brooke C. Wells

Erik Strindberg, erik@utahjobjustice.com (State Bar No. 4154)  
Kass Harstad, kass@utahjobjustice.com (State Bar No. 11012)  
Attorneys for Jodi Howick  
**STRINDBERG & SCHOLNICK, LLC**  
785 North 400 West  
Salt Lake City, Utah 84103  
Telephone: 801-359-4169  
Fax: 801-359-4313

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

**JODI HOWICK,**

Plaintiff,

vs.

**SALT LAKE CITY CORPORATION,**  
a Utah municipal corporation, and  
**MAUREEN RILEY**, Airport Executive  
Director, and **EDWIN RUTAN**, City  
Attorney, individually and in their official  
capacities.

Defendants.

---

**ORDER  
TO STAY PROCEEDINGS**

Case No. 2:11-cv-00728

Honorable Judge Dale A. Kimball

Based upon the parties' Stipulation and Joint Motion to Stay Proceedings, and for good cause appearing thereon, the Court hereby ORDERS as follows:

This action is stayed pending a decision by the Utah Court of Appeals in *Howick v. Salt Lake City Corporation*, Case No. 20110848-CA, District Court Case No.

090913336.

**BY THE COURT**

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, flowing style.

HONORABLE JUDGE DALE A. KIMBALL  
United States District Court Judge

**Approved as to form:**

**PARSONS BEHLE & LATIMER**

/s/ W. Mark Gavre\_\_\_\_\_

W. Mark Gavre

Nicole G. Farrell

Attorneys for Defendants

FILED  
U.S. DISTRICT COURT

2011 NOV 17 A 9:30

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

J. Ryan Mitchell (9362)  
Andrew V. Collins (11544)  
MITCHELL & BARLOW, P.C.  
6465 South 3000 East, Suite 203  
Salt Lake City, Utah 84121  
Telephone: (801) 998-8888  
Facsimile: (801) 998-8077  
Email: [rmitchell@mitchellbarlow.com](mailto:rmitchell@mitchellbarlow.com)  
[acollins@mitchellbarlow.com](mailto:acollins@mitchellbarlow.com)

*Attorneys for Defendant, Counterclaimant,  
and Third-Party Plaintiff Pinnacle Security, LLC*

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

GRAHAM WOOD, an individual,

Plaintiff,

v.

PINNACLE SECURITY, LLC, a Utah  
limited liability company,

Defendant.

**[PROPOSED] ORDER GRANTING  
STIPULATED MOTION TO EXTEND  
DEADLINE FOR DEFENDANT,  
COUNTERCLAIMANT, AND THIRD-  
PARTY PLAINTIFF'S RESPONSE TO  
MOTION TO DISMISS**

Case No. 2:11-cv-00749-DB

Judge Dee Benson

---

AND RELATED COUNTERCLAIMS AND  
THIRD-PARTY CLAIMS

---

This matter comes before the Court on the Stipulated Motion to Extend Deadline for Defendant, Counterclaimant, and Third-Party Plaintiff's Response to Motion to Dismiss. The Court, having fully considered the Stipulated Motion, and good cause appearing therefor, hereby grants the Motion. The due date for Pinnacle Security, LLC to file its memorandum in opposition to Plaintiffs' Motion to Dismiss [Doc. No. 14] is extended up to and including Monday, November 21, 2011.

DATED this 14<sup>th</sup> day of November, 2011.

BY THE COURT:

A handwritten signature in cursive script that reads "Dee Benson".

---

Judge Dee Benson  
United States District Court

FILED  
U.S. DISTRICT COURT

2011 NOV 15 P 1:42

DISTRICT OF UTAH

Bronson D. Bills (10185)

JONES BILLS, P.C.

1108 W. South Jordan Parkway, Suite B

South Jordan, Utah 84095

Phone: 801.618.1318

Fax: 801.618.1319

[bbills@jonesbills.com](mailto:bbills@jonesbills.com)

*Attorney for Plaintiff*

Jeffrey J. Steele (10606)

HIRSCHI STEELE & BAER, PLLC

136 E. South Temple, Suite 1400

Salt Lake City, Utah 84111

Ph. 801-990-0500 or 322-0593

Fax 801-322-0594

[jeff@hsblegal.com](mailto:jeff@hsblegal.com)

*Attorneys for Seterus, Inc. f/k/a IBM Lender Business Process Services, Inc. and Federal National Mortgage Association*

BY: \_\_\_\_\_  
DEPUTY CLERK

SO ORDERED

*Dee Benson*

DEE BENSON  
United States District Court

Dec 11-14-11

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH  
CENTRAL DIVISION

CYNTHIA MEZQUITI, an individual,

Plaintiff,

v.

AURORA BANK, FSB f/k/a LEHMAN  
BROTHERS BANK, FSB; SETERUS f/k/a  
IBM LENDER BUSINESS PROCESS  
SERVICES, INC.; FEDERAL NATIONAL  
MORTGAGE ASSOCIATION; AURORA  
LOAN SERVICES L.L.C.; DOE'S 1-5,  
unknown parties in interest,

Defendants.

**JOINT MOTION TO EXTEND  
PLAINTIFF'S TIME TO FILE AN  
OPPOSITION TO DEFENDANTS  
SETERUS' AND FANNIE MAE'S  
MOTION TO DISMISS**

Case No. 2:11-cv-00758DB

Judge BENSON

**COMES NOW**, the Plaintiff Cynthia Mezquiti ("Plaintiff"), by and through her attorney, and Defendants Seterus, Inc., f/k/a IBM Lender Business Process Services, Inc. ("Seterus") and Federal National Mortgage Association ("Fannie Mae") (collectively, "These Defendants"), and hereby file the instant Joint Motion to Extend Plaintiff's Time to File an Opposition to Defendants Seterus' and Fannie Mae's Motion to Dismiss until Thursday, December 8, 2011.

In conjunction with this Motion, Plaintiff and These Defendants (collectively, "The Parties") have filed a Memorandum in Support of this Joint Motion as well as a Proposed Order memorializing The Parties' request.

DATED this 9<sup>th</sup> day of November, 2011.

JONES BILLS, P.C.

/s/  
Bronson D. Bills  
*Attorneys for Plaintiff*

HIRSCHI, STEELE & BAER, PLLC

Jeffrey Steele, Esq.  
*Attorneys for Seterus, Inc. f/k/a  
IBM Lender Business Process  
Services, Inc. and Federal National  
Mortgage Association*



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

BARDE HOWARD BECKSTEAD,	)	<b>DISMISSAL ORDER</b>
	)	
Plaintiff,	)	Case No. 2:11-CV-769 CW
	)	
v.	)	District Judge Clark Waddoups
	)	
INMATE ACCOUNTING,	)	
	)	
Defendant.	)	

---

In an order dated September 8, 2011, the Court required Plaintiff to within thirty days pay an initial partial filing fee of \$34.83 and submit a consent to have the remaining fee collected in increments from his inmate account. To date, Plaintiff has done neither.

IT IS THEREFORE ORDERED that, because he has failed to comply with the Court's order and has failed to prosecute his case, Plaintiff's complaint is DISMISSED without prejudice. This case is CLOSED.

DATED this 16<sup>th</sup> day of November, 2011.

BY THE COURT:



---

JUDGE CLARK WADDOUPS  
United States District Court